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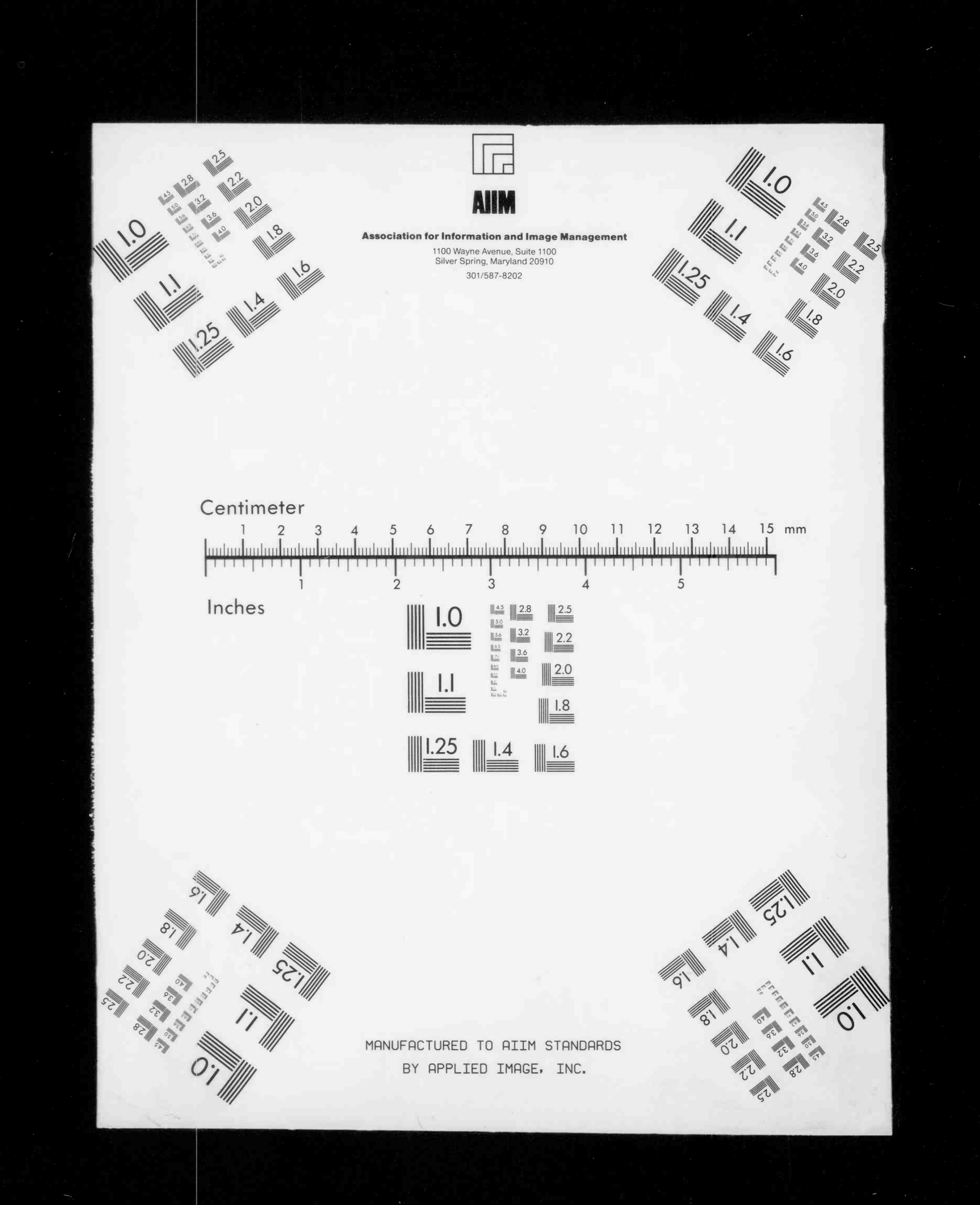
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ENGLISH PENITENTIAL DISCIPLINE AND ANGLO-SAXON LAW IN THEIR JOINT INFLUENCE

BY

THOMAS POLLOCK OAKLEY, A. M.

Sometime Fellow in History in Columbia University

Professor of History in Hardin College

SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
FACULTY OF POLITICAL SCIENCE
COLUMBIA UNIVERSITY

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PREFACE

SEVERAL years ago, Professor James T. Shotwell, of Columbia University, suggested to the present writer the rich possibilities for research still remaining insufficiently developed in the Penitentials. Later studies in the Anglo-Saxon Laws and on the penitential system have led to the present work. Before undertaking the constructive interpretation and use of evidence from the Penitentials, however, it has been found necessary to include chapters which will serve to clarify the textual difficulties and relationships of these sources. The work originally included materials on additional phases of penitential influence. But limits of space have eliminated this material which the author hopes to publish elsewhere.

He feels deeply indebted to Professor James T. Shotwell, a most kind friend and inspirer for many years, who first gave the present writer a vision of the religion of humanity and of truth in the callings of historical teacher and scholar. His helpful suggestions have greatly improved the general plan of the book. To Professor William W. Rockwell, of Union Theological Seminary, who has been chiefly in charge of this dissertation, the author owes many valuable suggestions. Professor Munroe Smith, of Columbia University, has read the portions on the Anglo-Saxon Laws, on which he has checked technical details. Miss Ruth Royd, sometime Professor of English in Hardin College, and Professor Austin P. Evans, of Columbia University, have read the manuscript and suggested helpful improvements in its style. The writer appreciates also the courteous and efficient assistance in

obtaining books that has been rendered by Miss Margaret Erb, and the Messrs. Frank and Frederick Erb, of Columbia University Library; by Doctors William W. Rockwell and Henry P. Smith, of Union Theological Seminary; by the librarians at Harvard University, the Library of Congress and the University of Chicago; and by the Edward Thompson Company, of Northport, New York. To Mrs. Oakley he is indebted for many months of devoted assistance.

Above all, he owes most to the unfailing devotion and encouragement given him by Jeannette Oakley, Adelaide F. Oakley and Elizabeth C. Oakley, his wife, mother and sister, respectively, to whom this book is dedicated.

T. P. O.

HARDIN COLLEGE, MEXICO, MISSOURI, MARCH, 1923.

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CHAPTER I

Historical and Critical Introduction

SECT. I. THE GENERAL IMPORTANCE OF THE PENITENTIALS

The decline of the Roman Empire brought with it a disturbance of the social system of Western Europe. The barbarians who overran the countries where Roman citizenship had been slowly extending and where Roman law had been, however tentatively, applied, lived under very different and far more primitive customs and laws. The resulting confusion was still further increased by the principles and practice of social discrimination in both systems, by the recognition of feud and private vengeance in Germanic law, and by the lack of organized authority for enforcing court decisions.[1]

In this period of confusion, the Church assumed many of the attributes of a state; bishops, with their episcopal jurisdictions, preserved the outlines of the ancient *civitates*, and monastic missions tamed the more savage instincts of the invaders. In short, civilization then began to recover lost ground again largely through the instrumentality of the Church.

In the history of this work of social development there is a phase that has not yet received adequate attention [2] nor the recognition due to its importance—a chapter in the influence of the Church, operating largely through the *media* of pen-

[1] For details, *vide infra*, chap. v.

[2] For a summary of some ways in which modern writers have incorrectly used materials from the Penitentials, *vide infra*, the "General Bibliography" at the end of this work. For individual instances, *infra*, under individual penitentials and under the treatment of specific offences.

ance and the Penitentials. The latter were manuals for the use of priests, and contained detailed lists of penances prescribed for various sins. They were constantly used[1] by priests and bishops in imposing penances for various kinds of immorality, paganism, heresy, insubordination to ecclesiastical authority and for a whole detailed category of sins.

The very great practical importance of the Penitentials for ecclesiastical discipline in the Middle Ages is evidenced by the fact that the ecclesiastical and secular laws[2] frequently required that priests use and be able to understand such codes. Numerous provisions for such requirement are found, for the Continent, in the capitularies of the Carolingian monarchs and in the decrees of councils and the instructions issued by powerful prelates. While, for pre-Norman England, the required possession and use of a penitential by a priest is implied or definitely demanded in several sources[3] for that period, both secular and ecclesiastical.

[1] The Penitentials were usually in Latin and bore various names: "*Libri Poenitentiales*," "*Judicia de poenitentia*," "*Libri de remediis peccatorum*," and the like; see examples of titles of individual penitentials *infra*, especially chaps. i and iv.

[2] For the requirement by the Carolingian capitularies of A. D. 802 or 803 and that of 809: Binterim, *Geschichte . . . Concilien* (7 vols. in 16, Mainz, 1835-1848), II, 449-450; an article by Vering, in *AKKR.* (1873), especially p. 217; Alzog, *Handbuch der universal Kirchengeschichte* (8th ed., Mainz, 1866, 2 vols., translated into English by F. J. Pabisch and T. S. Byrne, in 3 vols., Cincinnati, 1903), II, 165.

For similar requirement by the third Council of Tours and other councils and by Regino of Prüm, Burchard of Worms, and other prelates: Schmitz, H. J., *Die Bussbücher und die Bussdisciplin der Kirche* (Mainz, 1883, cited hereafter as "Schmitz I"), p. 1; Wasserschleben, F. W. H., *Die Bussordnungen der abendländischen Kirche* (Halle, 1851, cited hereafter as "Wasserschleben"), "*Vorrede*."

There was no officially established penitential as standard. *Vide* Vering, in *loc. cit.*, p. 216, n. 3, and Stubbs, in *Select Essays in Anglo-American Legal History* (Boston, 3 vols., 1907-1909), I, 253.

[3] *P. Egb., Prol.*: "Nunc ergo, o fratres, qui voluerit sacerdotalem auctoritatem accipere, imprimitus pro deum cogitet et preparet *arma ejus*, antequam manus episcopi tangat caput, id est (then follows list of books), . . . post autem *suum penitentialem*." *Vide* Schmitz, II, 662. *Cf. Canons of Aelfric* (11th century), can. xxi, in Thorpe, B., *Ancient Laws and Institutes of England* (1 vol., fol. ed., London, 1840, *Record Commission*), p. 444; also Aelfric, *Pastoral Epistle*, cap. xliv, in Thorpe, *op. cit.*, p. 471. Secular sources are mentioned *infra*, chap. v.

The penitential codes were widely distributed[1] during the Middle Ages and exercised a powerful influence on numerous phases of medieval institutions. Moreover, this influence, with that of other penitential measures, was far greater than is the case today. In particular its authority was considerably increased by the passage of numerous secular laws requiring penance for crimes, sins, and other offences against either Church or State. Then, too, because of the intermingling of secular and ecclesiastical jurisdictions, there was imparted to penitential influence a public or semi-public nature and power now absent. These factors are each so important that they will be treated separately in following portions of the work.

SECT. 2. EDITIONS AND CRITICAL WORKS ON THE PENITENTIALS

The great importance of the penitential canons and manuals of penance has often been recognized by various editions of penitentials; by critical research and monographs on textual questions connected with them; and by the frequent and extensive use of material from penitentials and penitential canons by writers on many aspects of medieval institutions. But no detailed, concrete work has been written on the collective moral influence of the Penitentials nor has sufficient attention been given to their social influence in

[1] As shown by location of MSS., discussed *infra*, chaps. i and iv. For a rather plausible theory that the Penitentials developed and spread private penance, *vide* Watkins, *op. cit.*, but especially *infra*, ch. ii, sects. 2 *et seq.*, on penance.

supplementing the primitive Germanic laws. Much, also, still needs to be done on textual questions that are still unsolved or obscure, as well as in utilizing penitential evidence from new angles, correcting inaccurate use of it by past writers, and the like.[1]

The early collections and editions of the Penitentials by Martène and Durand, Mansi, d'Achèry, Basnage, Canisius, de la Barre, Morinus, Sirmond, Mai, Spelman, Wilkins, Baluze and Petit [2]—all before the nineteenth century—are marred by credulous and careless acceptance of spurious or interpolated texts, and by lack of extensive critical collation of the many manuscripts of penitentials extant.[3] Wasserschleben's *Beiträge zur Geschichte der vorgrätianischen Kirchenrechtsquellen,* in 1839; Mone's *Quellen und Forschungen,*[1] in 1830; Kunstmann's [2] *Lateinische Poenitentialbücher der Angelsachsen;* and Thorpe's [3] texts of Anglo-Saxon penitentials, brought to light or suggested new manuscripts and readings, but failed to settle many difficult questions of authorship and of source relationship.[4]

[1] Modern writers on the history of penance, of liturgy and of other ecclesiastical institutions who have used materials from the Penitentials will be cited, with comments *infra,* especially throughout chaps. i, ii, iii, iv and vi. On paganism in England, penitential evidence has been used incorrectly by Fischer, *Aberglaube der Angelsachsen* (Meiningen, 1891), who uses many pseudonymous works as genuine; on the history of civilization in Friedberg, *Aus den deutschen Bussbücher* (Halle, 1868)—an excellent little book; and, on taboo, by K. Böckenhoff, in *Th. Q.,* XXXVIII (1906), 186 *et seq.,* and in his *Die apostol. Speisegesetz i. d. erst 5 Jahrhunderten* (1903), and in *Speisesatz. mosäische Art i. d. mittelälterliche Kirchenrechtsquellen Morgen-und-Abendlands* (1907). Other works will be mentioned in the "General Bibliography" at the end of this work.

[2] More definite bibliographical details will be given *infra,* this chapter, chap. iv, and in the "General Bibliography."

[3] For list of mss., see the critical works and editions of Schmitz, Wasserschleben, Haddan and Stubbs, Kunstmann, Hildenbrand, Vering, Fournier, Meurer, Zettinger, Albers, Hörmann, etc., mentioned in connection with individual penitentials *infra,* chs. i, iv. The researches of others, *e. g.* Antonius Augustinus, the Ballerini, and Spittler, as well as those of Binterim, were very limited and comparatively unimportant; *vide* Wasserschleben, *"Vorrede,"* pp. iv *et seq.* Some suggestive work was also done by Aug. Theiner *Disquisitiones criticae* (Rom. 1836); *cf.* Schmitz, vol. I, p. i *et seq.*

Thoroughly critical, excellent editions and collation of penitential manuscripts were first made by Hildenbrand and Knust.[5] In 1851, Wasserschleben published a particularly scholarly edition of the Penitentials, the general conclusions of which have been accepted by most scholars, with a few exceptions, to be noted later;[6] and his work is now regarded as truly epoch-making. In 1873, articles by

[1] Wasserschleben, *Beiträge,* etc. (Leipzig, 1839), has valuable hypotheses. See, especially, pp. 78 *et seq.; cf.,* also, the reviews of Jacobson in *Allg. Lit.-Z.* (1839), no. 214 *et seq.,* and by Bickell, in the *Krit. Jahrb. f. d. Rechtswiss.* (1839), p. 390 *et seq.,* and *cf.* Vering, *loc. cit.,* p. 205, no. 1, Mone, *op. cit.,* especially I, 494 *et seq.*

[2] Mainz, 1844.

[3] Thorpe, *op. cit.,* in *Record Commission, Anc. Laws and Institutes of England* (Lond., 1840), still has some value for the A-S. texts of penitentials, though wrong on authorship.

[4] See details under individual penitentials *infra,* chs. i, iv; *cf.* summaries by Wasserschleben and Vering, *loc. cit.,* and good summaries by Vering in *K. Lex.,* Herzog-Hauck, *DCA.,* etc., and an especially fine treatment by P. Fournier, in *RHLR.,* VI (1901), and Hörmann, *loc. cit.*

[5] K. Hildenbrand, *Untersuchungen über die germanischen Pönitentialbucher* (Würzburg, 1851). For further details, *infra, passim.* The preparatory collation in ms. by Knust greatly aided Wasserschleben.

[6] Agrees essentially with Hildenbrand, as regards the English penitentials; and, in spite of the attacks of Schmitz, is generally accepted as regards the influence of the English and Celtic penitentials, as opposed to the "Roman Penitential." In qualification of the above, some of Wasserschleben's Protestant conclusions on penance are, naturally, opposed by Catholic scholars; but they accept many of his textual criticisms and most of his readings. Exceptions are noted *infra,* chaps. i, iv, under the penitentials of pseudo-Cummean, pseudo-Bede I and II, *Martenianum,* and the text of the pseudo-Roman Penitential. For detailed references on the controversies over authorship, etc., *infra,* particularly chaps. i, iv, v and vi.

Vering[1] offered additional suggestions of value for the interpretation of the Penitentials, their sources, and the importance of penance as connected with medieval secular law. Haddan and Stubbs, from 1869 to 1878, republished Wasserschleben's texts of the early British penitentials, together with excellent texts for the English penitentials of Egbert and of Bede; but their greatest contribution was in publishing a text for the Penitential of Theodore, considered better than those in the editions of Wasserschleben and of Schmitz.

For the Penitential of Columban better texts and excellent textual criticism were presented by Seebass in 1883, 1893, 1896 and 1897.[2] In 1886 and 1896, Schmitz, in two volumes, published some new penitentials and collated numerous manuscripts in addition to those used by Wasserschleben, Haddan and Stubbs, and others. In these and several articles, Schmitz attempted to belittle the influence of the British and Anglo-Saxon penitentials, by substituting the so-called "*Poenitentiale Romanum*" as model or archetype for the chief Continental penitentials.[3] But his main contentions have not found acceptance among the great majority of scholars; and, in spite of the large number of manuscripts cited by him, his textual methods have been severely criticised by Albers[1] and Ehrhard.[2] But the completeness of his index and the inclusion of new texts give value to the works of Schmitz, when checked on doubtful details by others. On the chief questions of textual interrelationship and controverted questions of influence, especially fine results have been published more recently by Fournier,[3] Hörmann,[4] and others,[5] most of them strongly opposing the main contention of Schmitz as to the "Roman penitential." There have been many treatises[6] on the influence of the Penitentials upon canon law, food prohibitions, and other phases.

[1] In *AKKR.*, vol. xxx, pp. 204-209 and 365-371.

[2] O. Seebass, dissertation *Uber Kolumbans v. Luxueil Klosterregel u. Bussbuch*, (1883); *cf.* better edition and nn. in *ZKG*, XIV (1893), p. 430; *ibid.*, XVII (1896), pp. 215 *et seq.*; *ibid.*, XVIII (1897), pp. 58 *et seq.* These articles also possess great value for details on Celtic penitentials, and in general. Also *vide infra*, on Celtic penitentials for controversy.

[3] For bibliographies, see "General Bibliography," at the end of this work. For his other articles in support of the "Roman Penitential or Penitentials," *vide infra*, this chapter, *separatim*. The two chief editions and critical works by Schmitz have been *Die Bussbücher und die Bussdisciplin der Kirche* (Mainz, 1883), cited by me as "Schmitz I," and his *Die Bussbücher und das kanonische Bussverfahren*, cited hereafter as "Schmitz II" (Düsseldorf, 1898). For his other critical work on the Penitentials, *infra*, this chapter, on the pseudo-Roman Penitential and the British penitentials.

SECT. 3. PHASES OF PENITENTIAL INFLUENCE

Various phases of the influence of the Penitentials and of penance have been discussed by authorities on the development of canon law, church history, primitive religion, comparative law, and other subjects.[7] But many of these works

[1] B. Albers, in *AKKR.* (1901), LXXXI, especially 418 *et seq.*, criticizing Schmitz's versions of the Penitentials of Bede, pseudo-Bede, pseudo-Cummean and Egbert. For further details, *infra*, this chapter and chap. iv, under these penitentials.

[2] Ehrhard, in *Allgem. Litteraturblatt, XV Jahrgang*, nr. 6, *Spalte 163*, cited by Albers, *loc. cit.*

[3] Fournier, in *RHLR.*, VI (1901), 289 *et seq.*; VII (1902), 59 *et seq.* and 121 *et seq.*; VIII (1903), 528 *et seq.*; IX (1904), 97 *et seq.*; and his more recent articles and books on the Italian penitentials, etc.

[4] W. von Hörmann, in *Mélanges Fitting* (Montpellier, 1908), and in *Z. d. Savigny Stiftung f. Rechtsgeschichte, Kanonische Abt.*, I (1911), 195 *et seq.*, and II (1912), 111 *et seq.*

[5] For critical works on the Penitential of Cummean and others, *infra*, this chapter and chap. iv.

[6] See the list in Sägmüller, *Lehrbuch des katholischen Kirchenrechts*, (2 vols., Freiburg i. B., 1914), I, 153 *et seq.*

[7] One of the most valuable discussions, suggesting excellent fields for further research, is the stimulating book by E. Friedberg, *Aus den deutschen Bussbücher* (Leipzig, 1868). For discussions of topics connected with comparative law, *vide infra*, ch. v; for others, *supra*, sect. 1.

have become antiquated very rapidly, because of the great changes, already outlined, of expert opinion on the authorship, place, source-relationship, and inter-influence of individual penitentials.[1] Then, too, comparatively recent research into the history of penance has cast doubt upon traditional views as to public penance and, possibly, the manner of the early administration of penance in the Celtic Church. In the main, the new theories have been neglected in the chief editions of the Penitentials, as well as by other writers.[2] In addition, the growing development and application of anthropological, comparative methods to the history of religion and that of law, during the past half century or so, have necessitated and also facilitated more accurate and more complete interpretation of penitential material connected with these institutions.[3]

As the overwhelming majority of writers on the Penitentials have neglected to utilize their materials from these viewpoints, and as there exists at present no reliable guide in English to the editions and critical apparatus, the present writer believes that the time is now ripe for a new treatise. In fact, he believes that the penitential material, both in the Penitentials and elsewhere, offers a fruitful field for many valuable contributions. The need for further research, however, is especially noteworthy in regard to the moral in-

[1] Important matters bearing on the chronological appearance, for instance, of public penance in England, and the operation of ecclesiastical law in a given time and place. Many modern authorities, in particular, often use, as native English, several penitentials of Frankish origin, *e. g. P. Ps. Th., Ps. Bed., Ps. Egb.*, etc. Instances and authorities are given in chs. ii, iv, vi.

[2] For the new views of Funk, Koch, Fournier, and others, *vide infra*, ch. ii, where the recent contributions of Watkins to the literature on penance also will be discussed.

[3] *E. g.*, by the use of new material explaining private custom and tribal law, affecting, among others, the treatment of perjury, religious safeguards of the oath, and others. *Vide infra*, chaps. v, vi.

fluence[1] of the Penitentials, and, in particular, the part which they played in assisting the secular laws.

But the vast extent of the literature on questions connected with the Penitentials, together with the very great diversity and amount of source-material on these questions, have led the present writer to narrow the scope of this treatise. We shall, therefore, discuss the influence of those penitential practices and codes which originated or were used[2] in England or among the Welsh and Irish in the pre-Norman period. For comparison with Continental practices, we shall also adduce, in the notes, some citations from the principal Continental penitentials, especially from those giving information on Germanic and Celtic institutions.

SECT. 4. PROBLEMS, DIFFICULTIES, AND CONTROVERSIES

Among the first of the difficulties attending research in the Penitentials is the great variation of texts and individual readings, due partly to careless copyists, interpolations of later editors to fill gaps in the text, and the like. Closely connected with this is the uncertainty concerning the authorship[3] of individual penitentials. In view of the widely

[1] On the above phases, together with magic, various regulations against "unclean acts" (taboo), and others, see, also, § 5.

[2] Although the English origin of the Penitentials of pseudo-Bede, pseudo-Egbert, and pseudo-Theodore and of the Canons of pseudo-Edgar is justly disputed, yet their use in England undoubtedly influenced the Church there and, in the imposition of penance, the laity as well. This amply justifies the careful use of the material in them, when checked by native sources and even, in some cases, when not so supplemented, as showing attempts to innovate. There was also close textual connection between our main group and the Continental penitentials. *Vide infra*, chaps. i, iv, v, vi.

[3] Sometimes even the country of origin. The texts sometimes represent distinct manuscript penitentials which may have been used in individual dioceses or churches; *vide infra*, chaps. i, iv. Inadequate attention to important variations in penitential material has often marred the work of various writers; *vide infra*, chaps. ii, iii, vi, *passim*, on various phases of penance.

varying texts, we shall find it necessary to cite somewhat extensively variants which affect the general meaning or extent of individual penances, even in the case of manuscripts generally credited to the same original authors. Furthermore, some difficulties of interpretation will be considerably elucidated by materials from the contemporary secular laws. Many others are, at least partially, explained by comparison with the known detail of the contemporary administration of penance on the Continent.

SECT. 5. THE SOURCES FOR THE MEDIEVAL PENITENTIALS [1]

It is well known that several other groups of penitential canons were more or less closely related to the English penitentials, either as sources for the latter or as influenced by borrowing from English models. These close relationships were often of the utmost importance textually and for the transference of customs.

Foremost among the groups which influenced the English penitentials as well as others are those writings which may be termed the sources of the Penitentials. These sources were of various kinds.

According to Schmitz,[2] the chief sources for those penitentials which were written after the fifth century may be divided into two groups: the Canonical Letters of the Greek fathers; and the conciliar decisions and papal decretals [3] of the first five centuries. But one must add many others to his list. In particular, there was borrowing from other

[1] *I. e.* those of the Western Church from the fifth century forward.

[2] Schmitz, I, 34 *et seq.; cf.* Wasserschleben, op. cit., "*Vorrede*" and under his texts of individual codes.

[3] Schmitz and Wasserschleben, *loc. cit.;* Vering, in *AKKR.*, XXX, p. 208; also see the edition by Bickell, in his *Geschichte des Kirchenrechts* (Giessen, 1873), I, "*Beilage*," I, 107 *et seq.* For the early African councils as sources: Wasserschleben, 3-4; *cf.* Schmitz, I, 45.

Church fathers and early works: [1] e. g. from Augustine; Origen; possibly from the *Ordinatio Ecclesiae Apostolicae* and the *Constitutiones Apostolicae;* and from the so-called *Lex Dei.*[2] Likewise the Penitentials borrowed from the works of various medieval scholars; e. g. Caesarius [3] of Arles and, possibly, St. Eloi or Eligius of Noyon and other medieval writers or compilers of canon law. Very influential, also, were the decrees of later councils and synods,[4] from the sixth century forward. So, too, were the more or less genuine medieval collections of the canon law: e. g. the *Collectio Hibernensis;* [5] the *Capitula* of Benedictus Levita; the so-called *Statuta s. Bonifacii;* possibly the Pseudo-Isidoriana; and the *Capitula* of Ivo or Ebbo of Chartres.[6] Finally, earlier penitential codes often influenced later ones.

[1] For the *Ordinatio* as a source: Schmitz, I, 46, and Bickell, *op. cit., supra, passim.* For the *Constitutiones Apostolicae,* see the text of the Penitential of Theodore in Wasserschleben's edition; also *infra,* chap. iv. For the influence of Augustine, Origen and others, Lea, *Auricular Confession,* I, 82-83.

[2] *Vide* Schmitz, I, 194 *et seq.; cf. Th. Q.,* LXXXII (1900), 616, but especially *ibid.* (1906), by Sägmüller; also the standard editions listed by Sägmüller, *KR.*, I, 143 *et seq.*

[3] For the influence of Caesarius of Arles upon the Penitentials: Lea, *op. cit.*, I, 42, especially on methods of expiation; also *cf.* Lea and Hörmann, *opp. citt.*, under their discussions of the *Statuta ecclesiae antiqua.* In particular, see an article by P. Lejay, "*Le rôle théologique de C. d'A.*", in *RHLR.* (1905), 468 et seq.

[4] Lea, *loc. cit.; cf. infra,* under individual penitentials in chaps. i and iv.

[5] On the *Hibernensis* as related to the Penitentials, *infra,* this chapter, under the British and Irish penitentials.

[6] On the *Capitula* of Benedictus: Hörmann, *op. cit.*, p. 7 and note 15; also *infra,* this chapter, under the pseudo-Theodore. On Ivo of Chartres: Hörmann, *op. cit.*, 15 and note 46.

For further detail on sources, *vide supra,* the critical works of Fournier and others on individual penitentials in this chapter; also chap. iv for the sources of the English group.

(1) The Canonical Letters of the Greek fathers were certain well-known epistles written by preeminent bishops and Church fathers, especially among the Greeks, in the early centuries of the Christian church, in answer to questions on church-discipline. In spite of their somewhat private character, these answers, through their orthodoxy and the eminence of their authors, came to be used in other dioceses as well and to be valued as ecclesiastical norms, as canons for the discipline of penance, gaining the name of "canonical letters." [1] Of these letters, the most influential upon the penitentials of Great Britain and Ireland discussed in this work are those of Gregory Thaumaturgus of Neocaesarea and of Gregory of Nyssa, but especially those of Basil the Great.

The Canonical Letters of Basil [2] the Great, in particular,

[1] On the Canonical Letters as related to the Penitentials: Wasserschleben, 1 and *passim;* Schmitz, I, 34 *et seq.*, 102 *et seq.*, and his "*Einleitung*," also *infra*, chs. i, iv, under the sources of individual penitentials. For good summaries of the canonical letters: *KLex.*, II, 1571-1572; Alzog, *Church Hist.*, I, 732; Rauschen, *Busssakrament*, 158. Texts of portions of the canonical letters are in Watkins, *op. cit.*, 294 *et seq.*, after Migne.

[2] For the Canonical Letters of Basil, as sources for the Penitentials: Schmitz, I, 36 *et seq.* and *passim;* Wasserschleben, p. 4; but especially the Penitential of Theodore in the editions of the above writers; while others will be mentioned *infra*, chs. i and iv, under individual penitentials; also *cf.* Vering, in *AKKR.*, XXX, *passim*, and *DCA.*, II, 1608.

For editions: the *Opp.* in *MPG.*, XXIX-XXXI, and especially in Pitra, *Juris ecclesiastici Graecorum historia et monumenta* (Rome, 1864); also the English translation in *NPNF.*, VIII (ed. W. B. Jackson, 1895). For texts on penance, *vide* Watkins, *op. cit.*, 322 *et seq.*, who accepts them as Basil's but believes that his canons recorded customary discipline in Caesarea and the neighboring churches, rather than innovations. For the controversy over their genuineness: Schmitz, I, 39 *et seq.*, 520; Wasserschleben, 2; Frank, *Buszdisciplin*, 439; Binterim, *Denkwürdigkeiten*, 366 *et seq.;* but especially the excellent essay by F. Loofs, (Halle, 1879). *Cf.* Sägmüller, *KR.*, I, 52, 152, and II, 228, 391. In view of the constant use of these canonical letters as Basil's in the Penitentials, modern doubts as to their authenticity have little bearing on the influence of the letters upon the Penitentials.

exercised a very strong influence upon the course of penance and the content of penitentials. The chief of Basil's canons, for our purposes, are devoted to penances for violation of virginity, second marriage,[1] magic, violation of graves, homicide of various kinds, adultery, incest, theft, perjury, abortion, idolatry, infanticide, and other offences; as well as some regulations regarding the disabilities of penitents. The above list shows clearly the comprehensiveness of these canons; and it may be remarked, in passing, that the penances prescribed by Basil are especially severe, in comparison with others.

Closely related in content to the Canonical Letters of Basil the Great is the similar letter of his brother, Gregory of Nyssa, (372-95). This letter treats in detail the origin and nature of the three faculties of the soul; in eight canons prescribes the penances for fornication, homicide, theft, apostasy, sacrilege, adultery, incest, and sodomy; and depicts the methods of penance. These canons [2] enjoyed a high reputation for orthodoxy, and their influence upon penitentials was very strong.

The Canonical Letter [3] of Gregory Thaumaturgus, (*ca.* 258), is mainly devoted to the treatment of the lapsed and

[1] Technical "digamy."

[2] The letter is addressed to Letojus, bishop of Melitene, about Easter, A. D. 803. It is edited in *MPG.*, XLV, 221 *et seq.*, with Latin translation; in the *Opera*, ed. by Front de Duc (2 vols., Paris, 1603); with commentary by Forbes and Oehler (1855, unfinished); but is omitted in the English translation of Gregory of Nyssa in *ANF.*, V. For the high reputation of the letter: Schmitz, I, 44 *et seq.;* Watkins, *op. cit.*, 298, 326. Passages borrowed from the letter by the Penitentials are indicated *infra*, chs. i and iv, under individual codes. The "faculties of the soul" treated in it were: "Ratio, concupiscentia, ira."

[3] For comments and texts: Schmitz, I, 37-38 and n. 1; *MPG.*, X, 1019-1048; the edition by F. Loofs (1906), p. 333, n. 7; the English translation in *ANF.*, VI; the edition of the *Opera* by G. Voss; and Watkins, *op. cit.*, 222-224, after Migne, and Watkins' English translation, besides his comments on pp. 239 *et seq.*

other important contemporary questions, but it established important prescriptions for the penance for idolatry and similar sins. It had some influence upon penitential codes, though less than the two preceding.

(2) The collection of canons compiled by Dionysius[1] Exiguus, at the end of the fifth or beginning of the sixth century, was frequently used by the compilers of the Penitentials as a source for the canons of councils before that time. As part of a later, larger[2] compilation by Dionysius, this collection attained the highest reputation and most extensive use in the medieval Western Church and even in the Orient. In this later form, apparently, it was introduced into England by Theodore of Canterbury;[3] though the collection introduced as the *Dionysio-Hadriana* into the Carolingian empire (A. D. 774), through its official recognition by the diet at Aix-la-Chapelle (A. D. 802), probably exercised greater influence upon those Frankish penitentials which borrowed directly from the *Dionysiana*.[4] In the *Dionysiana* the provisions on penance are numerous, especially in decisions on the three known and recognised canonical sins; and they show great harmony with the prescriptions of the canonical letters.

[1] On the *Dionysiana*: Sägmüller, *KR.*, I, 150; Maassen, Fr., *Geschichte der Quellen . . . des kanonischen Rechts, passim*, particularly p. 428; Schmitz, I, 47 *et seq.*; *MPL.*, LXVII; but especially Turner, C. H., in his *Ecclesiae occidentalis monumenta*, I (Oxford, 1899).

[2] Enlarged, in particular, by alleged decretals from P. Siricius (A. D. 384-398) to Anastasius II (496-498). *Vide* Sägmüller, *KR.*, I, 150. Later there were many other additions, especially of allegedly papal materials. For an excellent edition, see G. Voellus and H. Justellus, *Bibliotheca jur. can. veteris* (Paris, 1661), pp. 101 *et seq.*

[3] *Vide infra*, chap. iv, under the sources of Theodore.

[4] *I. e.* in sections which do not borrow from the early Celtic and English penitentials, but still show influence by the *Dionysiana*. On the borrowing from the *Dionysiana* by the Penitentials, see also Schmitz, I, 150 *et seq.*

SECT. 6. THE CHIEF CONTINENTAL PENITENTIALS[1]

Certain Continental penitentials are important, for our purposes, because of reciprocal textual influence between them and our group and because they supply additional illustrative material for comparison on important points. We shall, therefore, treat briefly the most important among them, following in the main the authority of Schmitz and of Wasserschleben, except in some cases where positive or fairly definite changes in scholarly opinion[2] have taken place.

The full development of the system of penitentials is generally regarded as having started[3] with the Celtic codes of David, Vinnian, and others of the early British Church, followed by those of Columban and Cummean, on the Continent;[4] and by the Anglo-Saxon penitentials of the native group. According to the opinion of a majority of scholars, these codes were the first[5] to form definite models for penitentials in the Western Church, in spite of the attempt of Schmitz to demonstrate that the "Roman group" was the first. It is probable that the influence of the earlier

[1] We omit discussion of Eastern penitentials, other than the treatment *supra*, under the Canonical Letters.

[2] *Vide infra*, this chapter, for modifications of scholarly opinion in regard to the penitential codes of Columban (Seebass), Cummean (Zettinger), the pseudo-Theodore (Hörmann), the Valicellian pentitentials and others (Fournier), and the pseudo-Roman Penitential (Fournier and others). Also see chap. iv.

[3] An earlier, less influential attempt to systematize the regulation of penance was the *Codex Ecclesiae Africanae*, from Carthage (*ca.* A. D. 419). *Vide* Schmitz, I, 49, 160, and *DCA.*, II, 1608.

[4] This great influence of the Celtic group of penitentials is supported by the overwhelming verdict of the chief editors and critics of the penitential codes in the works cited in this chapter and *infra*, chap iv and "General Bibliography." *Cf. infra*, chaps. i and iv, under individual penitentials.

[5] Opposed to Schmitz's theory that the model for the Western Church was the so-called "Roman Penitential." On the latter, *infra*, this chapter.

Welsh penitentials was spread by missions to Ireland; and that the resulting Irish and old Welsh codes were then carried by the Celtic missions to Great Britain and the Continent. Thither they were later followed by the English penitentials of Theodore and of Bede, which had been formed largely on Celtic lines but subsequently exercised even wider influence.[1]

From the seventh century onwards the number of penitential codes increased, as did also the tendencies to elaborate the distinctions of penances assigned for long categories of sins. There also sprang up a new group of penitentials which were marked by their arbitrary, indiscriminate and sometimes lax provisions. The use of these and of earlier penitentials was favored in some parts of the Frankish domain, particularly in centres of Celtic or English influence.

But they encountered opposition elsewhere which, in the reform movement of the ninth century, waxed strong under the lead of powerful prelates and reform councils.[2] These, however, were unable to suppress the chief penitentials then in use[3] or to prevent their spread and textual influence

[1] For an excellent, brief sketch of the history of the Penitentials, *vide* Watkins, *op. cit.*, 603 *et seq.*, but especially 627 *et seq.*, 643 *et seq.*, 735 *et seq.*, and 757 *et seq.* On the influence of individual groups and codes and their textual relations, *infra*, this chapter and chap. iv.

[2] For the opposition to the Penitentials: Schmitz, I, 119; Lea, *op. cit.*, II, 104; Watkins, *op. cit.*, 694 *et seq.* On Celtic and English centers of influence in the Frankish kingdom, *vide* Watkins, *op. cit.*, 537 *et seq.*, 688 *et seq.*, and his last chapter; also 757 *et seq.* The chief opponents of indiscriminate use were men like Hincmar of Rheims, Ivo or Ebbo of Chartres, Halitgar of Cambrai and, later, Regino of Prüm; the chief councils concerned—those of A. D. 813 at Chalons and Tours, of Paris (A. D. 828), and of Mainz (A. D. 847). *Vide* Watkins, *op. cit.*, 702 *et seq.*

[3] Wasserschleben, 77 *et seq.*; Lea, *op. cit.*, II, 104-105; Scherer, *KR.*, I, 209, note 3; Dove, in *ZKR.*, IV (1864), 13 *et seq.*, with many references.

down to a late date. But the reform movement succeeded in encouraging the compiling of new[1] penitential books more strictly in accord with the canons. Although these reform books soon declined to a position subordinate to their predecessors, yet they possess significance for the English Church because some of them furnished models for late English penitentials. By about A. D. 1050 the Penitentials appear to have spread to Rome itself and, in the twelfth century, passages were incorporated into the canon law by Gratian and others. In the twelfth century the true penitentials were probably superseded by the "*summae confessorum.*"[2]

So far as known at present, the first Frankish penitential in point of time was that by the Celtic missionary Columban.[3] This followed extensively the Penitential of Vinnian,[4] formed the basis for numerous undoubtedly Frankish collections, and is supposed by some to have strongly influenced the development of penance on the Continent during the period of the Penitentials.

Coming after the Penitential of Columban but nearly, if

[1] Schmitz, I, 712 *et seq.*; Wasserschleben, 535 *et seq.*; Watkins, *op. cit.*, 712.

[2] Schmitz, I, "Sechster Theil", 792 *et seq.* and his chapter i *et seq.* and II, "*Vierter Abschnitt*," 720 *et seq.*; Wasserschleben, 623 *et seq.*; Sägmüller, *KR.*, I, 155 *et seq.*; Watkins, *op. cit.*, 741 *et seq.*

[3] Columban's *Liber de Poenitentia* or *De Poenitentiarum mensura taxanda*, absolutely distinct from his strictly monastic rule—*Regula Coenobialis* or *Regula fratrum Hibernensium* or *Columbani Liber de quotidianis poenitentiis monachorum*. On the Penitential of Columban: O. Seebass' edition and critical work in his dissertation *Über Columbans v. Luxueil Klosterregel u. Bussbuch* (1883); and his articles in *ZKG.*, XIV (1893), 430 *et seq.*; XVII (1896), 215 *et seq.*; XVIII (1897), 58-76; and in *Deutsche Zeitschrift f. Kirchenrecht* (1897), 24 *et seq.* Seebass' views are opposed by Schmitz's theory of the "Roman Penitential," *q. v.*, *infra*, but the overwhelming majority of scholars favor the former.

[4] *Cf.* Seebass, *loc. cit.*; Watkins, *op. cit.*, 590-594, 610, 613 *et seq.*

not wholly, equalling it in importance, are two penitentials ascribed to Cummean,[1] one erroneously the other correctly. It is believed that these codes by Columban and by Cummean may have been very influential in spreading Celtic customs [2] on the Continent.

The so-called "Roman Penitential and Roman group," edited by Schmitz [3] and others, have been assumed by Schmitz to be of Roman origin and to have constituted models for the development of the penitential system. But this idea is rejected by the overwhelming majority of authorities, who agree with Wasserschleben and Fournier that they are of late Frankish origin, and that the Celtic and English penitentials formed the earliest Western models for the Western penitentials. Hence the pseudo-Roman Penitential, as it should be called, had no influence upon the

[1] The genuine work of Cummean is published by Zettinger, who locates it in the seventh century; *vide AKKR.*, LXXXII (1902), 501 *et seq.* This is now generally regarded as a distinct work from the later *Excarpsus Cummeani* published in the editions of Wasserschleben and Schmitz. This latter work of the ninth century, founded upon the earlier one, is called by me "Pseudo-Cummean."

[2] See the main thesis in Watkins, *op. cit., passim;* also *infra,* this chapter and chaps. ii and iii, on the Celtic penitentials and on private penance.

[3] The pseudo-Roman Penitential was first published by Halitgar of Cambrai (d. 831), and by Rhabanus Maurus (d. 856). For later editions of Basnage, Canisius, Morinus, etc., *vide* Wasserschleben and Schmitz, *passim.* That published by Schmitz is completer than Wasserschleben's. Schmitz's theory of origin for this penitential code is set forth in his edition of the Penitentials, in both volumes, *passim* (many places), and in his articles in *AKKR.*, XXXIII, XXXIV and LXX. *Cf.* Vering, in *AKKR.* (1873), and Hildenbrand, in *Kritische Jahrbuch f. deutche Rechtswissenschaft,* XVIII, 514, and his *Untersuchungen über die germanischen Pönitentialbücher,* 76. This theory of Roman models for the Penitentials is rejected absolutely by the very great majority of scholars, who favor the theory of Celtic influence instead; *vide supra* on the Celtic penitentials, and *infra,* this chapter, under the same head.

native British and English [1] penitentials and merits no further attention here.

There appeared, also, penitentials by Halitgar of Cambrai, (d. 831) and by Rhabanus Maurus,[2] (d. 856). These afforded powerful opposition to the use of previous penitentials for a time and strongly influenced the text of penitentials used in England [3] late in the pre-Norman period.

One of the most important Frankish penitentials connected with the English penitentials in the late pre-Norman period is that formerly but erroneously ascribed to Theodore. This well-known compilation has been extensively cited as genuine by scholars [4] who mistakenly follow the

[1] *I. e.* the older English penitentials which originated in England, in contrast with those used there later but of Frankish origin; *vide infra,* chap. iv, for distinctions.

[2] That by Halitgar (written some time between A. D. 817 and 831) contains six books, of which the sixth book contains the pseudo-Roman Penitential. *Vide* Schmitz, I, 252 *et seq.,* and II, 266 *et seq.,* for a good edition, far better than the incomplete versions in Wasserschleben, *q. v., passim,* and the still poorer edition in Migne, *MPL.,* CV, 651 *et seq.* For critical matter, see, especially, an article by Nostitz-Rieneck, in *ZKT.,* XXI (1896), 566 *et seq.,* and another by Fournier, in *RHLR.* (1903), 528-549. These supersede the materials mentioned in Maassen, *Geschichte der Quellen,* etc., I, 863-869. Also see separately on pseudo-Roman Penitential.

For Rhabanus Maurus' penitential: Maassen, *op. cit.,* I, 870-871; Scherer, *op. cit.,* I, 213 and n. 26; Schmitz, I, 733-741; *MGH., Epp.,* V, 462 *et seq.*; but particularly W. Burger, in *Katholik* (1902), II, 51 *et seq.,* and J. Schmidt, in *Katholik* (1906), II, 241; and *MGH., Epp.,* V, 566 *et seq.* The earlier critical work of the Ballerini and of the Migne edition is now antiquated.

[3] For the influence of Regino of Prüm, *vide* Schmitz, *op. cit., passim,* and *infra,* chap. iv.

For the influence of Frankish customs on late English penitentials, penance, etc., *infra,* chaps, iii, iv. *Cf.,* also, Watkins, *Hist. of Penance,* 708-709, who, however, omits mention of their influence on English penitentials of later date.

[4] E. g. writers in *Essays in A-S. Law* (Boston, 1876), Fischer, *Aberglaube der Angelsachsen* (Meiningen, 1896), Lea, *Superstition and Force* (Phila., 1866, 1892), and others who use this spurious work as Theodore's.

earlier, poor editions of Spelman, Thorpe and Kunstmann. But, since the time of Wasserschleben and of Hildenbrand, it has been regarded by the best authorities as a Frankish pseudo-Theodore of the ninth[1] century and is so used by the present writer.

Compiled from numerous sources of that century and earlier, its content apparently occupies an intermediate position between the earlier, Celtic and Anglo-Saxon penitentials, on the one hand, and the opposing, reactionary penitentials of the ninth century, on the other. The pseudo-Theodore was apparently designed for an extensive use and to increase the practicality of penances, but it fell a victim to the gradual decline of penitential discipline in the Frankish Church and was used very little as a source[2] for ecclesiastical ordinances, as compared with other well-known codes. It is of interest chiefly because of its influence on English laws[3] of the late pre-Norman and early Norman periods. There seems to be no conclusive evidence, as yet, that it was ever used directly as a manual of confession and penance in England.

[1] The chief sources for the pseudo-Theodore include the pseudo-Cummean and the genuine Penitential of Theodore, with lesser borrowings from the codes of Bede, Egbert and Halitgar, and from the pseudo-Roman Penitentials. On these matters, *vide* Hörmann, *op. cit.*, 9-10, and *passim;* the articles by Fournier, cited *supra,* sect. 2, among the critical writings; Schmitz, I, 550-551, and II, 645-646, 677; and Hildenbrand, *op. cit.*, 38-39. Some material may have been independent and arbitrary; *vide* Hörmann, op. cit., 11-12.

[2] It influenced sections of the spurious *Excerptiones Egberti* and portions of the spurious *Capitula Theodori* published by Petit; also parts of the later *Decretum Burchardi* and *Corrector Burchardi; vide opp. citt. supra,* of Hörmann and of Fournier, *passim.*

[3] *E. g.* the late pseudonymous *Leges Henrici Primi,* of mingled Frankish and Anglo-Saxon origin; *vide* Liebermann, Gesetze, II, *s. v.* "*Bussbücher*", "*Poenitentialbücher*", "*Pseudo-Theodore*", and "*Konones*". Also *vide infra,* chap. iv. Watkins, *op. cit.*, omits this.

SECT. 7. THE WELSH AND EARLY BRITISH PENITENTIALS

Especially important for the penitential system were the Welsh and early British and the Irish penitentials. Of all the penitential codes these, as we shall see, were of greatest influence for the English. In fact, it is probable that their very great textual influence[1] upon the English group was preceded by strong preparatory influence of these earlier codes in organizing the penitential system in the British Church. The penitential codes native to Great Britain and Ireland in this earlier period naturally divide into two groups: first, the Welsh and early British, and, secondly, the Irish. The importance of each group is so great as to merit separate attention.[2]

According to the leading scholars on the subject of the Penitentials,[3] the extant penitentials in the strict sense of the word which originated among the Welsh or by Welshmen include those of David of Menevia and of Gildas.[4] In addition to these, drawn up for the use of confessors

[1] For obvious reasons, Wasserschleben and other editors class as Celtic the early British or Welsh penitentials of David and of Gildas; and the Welsh conciliar decisions; the Irish Penitential of Vinnian and the Irish conciliar decisions; and the penitential codes of Celtic missionaries on the Continent. But, for our purposes, a geographical grouping is preferable, as will appear.

[2] The whole Celtic group above, with the English penitentials of Theodore, Bede and Egbert, had the profoundest influence on later English and Continental ones. On this influence, *vide* Maassen, *Quellen,* etc., I, 784-786; Löning, *KR.,* II, 435, 472; Hinschius, *KR.,* IV, 16 *et seq.,* 823 *et seq.,* and V, 85 *et seq.;* Sägmüller, *KR.,* I, 154-156; Scherer, *KR.,* I, 158-162, 208-214; Rauschen, *Busszakrament,* 150, 188; and the works on canon law, church history and penance mentioned *infra,* the "General Bibliography," of which all support the theory of Celtic influence rather than Roman. Also see the works on the pseudo-Roman Penitential, *supra.*

[3] See editions cited *supra,* this chapter, and individual penitentials, *infra,* this chapter.

[4] For dates, *infra,* this chapter, as with others mentioned, individually.

in prescribing penance, there are also sets of important penitential canons credited to Welsh synods, such as might have been issued by church councils or, possibly, in some cases, by the mixed synods so typical of that period among the Anglo-Saxons.[1] These penitential canons include that credited to the Synod of Brevi, another to that at "*Lucus Victoriae*," and, possibly, a third set called variously "*Canones Wallici*" or the "*Judicia Culparum*." Of these penitential canons, all have been published by Wasserschleben[2] and, after him, by Schmitz,[3] Haddan and Stubbs,[4] and Williams;[5] while individuals among them have been separately published in various editions to be cited below in discussing individual penitentials and sets of penitential canons.

The synod of Brevi and that of *Lucus Victoriae* are generally regarded[6] as Welsh synods of the time of David, prob-

[1] See use of term "synod" for mixed assemblage by prologues to Anglo-Saxon Laws, in Liebermann, *Gesetze, passim*.

Bright believes that the "*Synodus Luci Victoriae*", or "the Synod of Victory", as he calls it, "was properly the Synod of the Wood of Victory, being held on the site of a battle in which Britons had been successful". He considers "manifestly absurd" the later assumption that it and the Synod of Brevi, (*Llandewi-Brefi*), were held by authority of the Roman see. But Bright believes that they and other parts of the Welsh system of penance exercised a great influence. As an example, he says: "The great Irish-born missionary St. Columban directed a criminal who professed contrition to spend twelve years in penance among the Britons." *Vide* Bright, *op. cit.*, 36.

[2] *Op. cit.*, 101 *et seq.*, partly after the same mss. as Martène, *op. cit.* IV, coll. 7 *et seq.* Watkins, *op. cit.*, 587-602, has some canons after H. and S. and Wasserschleben.

[3] *Op. cit.*, I, 494 *et seq.*

[4] *Op. cit.*, I, 113, 117-120, 127-137.

[5] *Gildas*, II, as cited on individual penitentials, *infra*.

[6] For the following, I have used, in addition to other works to be cited, the following: Wm. Bright, *Chapters of Early English Church History* (Oxford, 1878, 3rd ed., 1897); J. E. Lloyd, *History of Wales* (2 vols., London, 1911, 1912), especially vol. i of the 2d ed.; Willis-Bund, *The Celtic Church in Wales*.

ably held in Northern Wales, shortly after the middle of the sixth century.[1] Their great influence upon penitentials is frequently shown by the numerous citations[2] from these synods. The chief biographer[3] of St. David, in a passage[4] hitherto neglected, evidently considers that the decrees of these two synods[5] were among the writings of St. David himself. For, this biographer says, "From which (decrees) the battles of the Lord were fought, as may be found in very ancient writings of the father (David), partly written with his own holy hand." Among penitentials most strongly influenced by borrowing from the acts of these two synods are those of Theodore,[6] Bede,[7] the pseudo-Cummean and

[1] On the controversy over their origin, *vide* Williams, *Gildas*, II, 286 and notes, for an excellent summary; *cf.*, also, H. and S., I, 117, ascribing to about A. D. 569, and Maassen, *Quellen*, etc., I, 786-787.

[2] *Vide infra*, this section, under individual penitentials.

[3] Rhygyfarch or Ricemarch, *Life of St. David*, written much later by an archbishop of St. David's, published in Rees, W. J., *Lives of the Cambro-British Saints* (Llandovery, 1853), to be cited hereafter by its usual abbreviation—"Rees, *CBS*." The text is as follows (Rees, *CBS.*, 139): "Ex his duabus synodis, omnes nostre patrie ecclesie modum et regulam Romana auctoritate acceperunt; quarum decreta que ore firmaverat, solus ipse episcopus sua sancte manu literis mandavit." *Cf.* the English text in Rees, *CBS.*, 442-443. The names of the synods are given as "*Brevi*" and "*Victorie*" (*loc. cit.*, 137, 139). Some of this passage is found in *Giraldus Cambrensis*, from which it is cited by Wasserschleben, 8, and Schmitz, I, 491, without noting its significance for authorship. See, also, the Brewer edition of *Giraldus* (*Rolls Ser.*, London, 1863), vol. 21, p 401: "Quarum decreta ore promulgaverat praesul David sua quoque sancta manu literis mandavit."

[4] Cf. also *H. and S.*, I, 116 and note a, which, however, omits reference to the recording by David.

[5] For editions of these synods: H. and S., I, 116-117; Wasserschleben, 103 *et seq.*; Williams, *Gildas*, II, 286-287; Schmitz, I, 493 *et seq.*; Martène, *Thesaurus Novus*, IV, 9.

[6] *Vide infra*, chap. iv, under that penitential.

[7] *Vide infra*, chap. iv, on the Penitential of Bede.

Egbert; also the pseudo-Roman [1] Penitential and the Bigotian Penitential.[2]

The Penitential of David,[3] in particular, possesses great significance and deserves close attention because it probably exerted a powerful influence upon the early British Church; and because of the prominent position and personality of its reputed author and its close relations to the English penitentials and others. In fact, it has been treated by modern scholars in a very inadequate manner, entirely disproportionate to its importance. This penitential, the *Excerpta quaedam de libro Davidis,* may represent extracts from a larger penitential by him; and is generally[4] ascribed to St. David of Menevia, with a date somewhere between A. D. 550-600. In addition to influencing the *Collectio Hibernensis* and the Celtic penitentials, it was borrowed from by the penitentials of Theodore, of Bede and of Gildas.[5] Its direct, practical influence on the prescribing of penances was, doubtless, very considerable, in view of the very great reputation and influence of St. David and of the fact that, so far as we now know, the penitential ascribed to him is the only one extant that was used in the early Welsh Church.

The Penitential of Gildas,[6] of a date about A. D. 560, was probably written in Brittany and chiefly used on the

[1] See the parallels in the editions of Wasserschleben.

[2] *Vide* Wasserschleben 104.

[3] From the *Codex Paris.*, no. 3186, fol. 282-283, used by Martène, *Thesaurus Novus*, IV, 9-10; from the posthumous works of Knust, by Wasserschleben, 101-102, from which it has been taken by Moran, P. F., *Essays on . . . the Early Irish Church* (Dublin, 1864), 267-268 (in part); H. and S., III, 118-120; Schmitz, I, 492-493; Williams, *Gildas*, II, 286-287; and Watkins, *op. cit.*, 588-589 and 605-606.

[4] *Vide* the *opp. citt., supra; cf.* also an ascription to Gildas by Bradshaw, rejected by others and discussed, with objections, by Williams, *Gildas, loc. cit.*

[5] For these parallels, *vide* Wasserschleben, 101-102.

[6] In the same MS. which contains that of David. The Penitential of

Continent, but deserves some attention because of the especially prominent position and influence of Gildas among the Welsh clergy and on the early British Church in general. It possesses even greater significance for us for the somewhat extensive citations from it in the compilations by Theodore, Egbert, Bede, the pseudo-Cummean, the pseudo-Roman penitentials, and the late *Poenitentiale XXXV. Capitulorum.*[1] Like the Penitential of David and that of Vinnian, it has the severe[2] penances usually characteristic of the Celtic penitentials.

SECT. 8. THE IRISH PENITENTIALS AND PENITENTIAL CANONS

These compilations, more than any others,[3] perhaps, furnished models for the English group, as well as being extensively followed on the Continent, in individual cases.

Gildas has been edited by Martène, *op. cit.*, IV, 7-8, and Wasserschleben, 105-108; and reprinted by H. and S., I, 113-115, and in Schmitz, I, 495-497; also in Williams, *Gildas*, II, *passim*. *Cf.* Mommsen, in *MGH., Auct. chron. min.*, III, 89-90, and the critical notes in pp. 11 *et seq.* On the authorship *cf.*, also, Wasserschleben, *Irische Kanonensammlung*, lxxiii, and Bradshaw, *Collected Papers*, 417 (Cambridge, 1889). Watkins, *op. cit.*, 588, has portions of the text, after H. and S.

[1] See the parallels noted in Wasserschleben's edition.

[2] Examples are noted, *infra*, chap. iii. Watkins, *op. cit.*, 603, regards the Penitential of Gildas as a record of British discipline in the first half of the sixth century rather than as an innovation; and considers that it records the earliest discipline of its type.

We omit detailed discussion of the interesting *Canones Wallici*, which are predominantly secular in origin and apparently had no influence upon the English group. They are significant, however, as providing penances that were enforced by secular law. *Vide* Martène and Durand, *op. cit.*, IV, 13 *et seq.*, as *Excerpta de libris Romanorum et Francorum;* Wasserschleben, 124 *et seq.*, as *Canones Wallici;* H. and S., I, 127-137, after another MS.; Williams, *Gildas*, II, 286 *et seq.*; but omitted by Schmitz, I and II.

[3] Except, of course, the conciliar decrees and other sources for the penitentials discussed *supra*, sect. 5.

It is also probable that they powerfully influenced the ecclesiastical, moral, and legal life of the Irish. The chief collections of Irish penitential canons include decisions attributed to early Irish synods and the penitential code ascribed to Vinnian or Finnian.[1] These and other penitential decisions which may have been associated with the acts of Irish saints,[2] developed great significance because, as in England,[3] the performance of penance for certain crimes was required and enforced by the secular[4] laws.

Aside from the influential canons on penance attributed by some to synods under St. Patrick[5] and possessing no known significance for the English group, the collection called *Canones Hibernenses*[6] exerted a very strong influence upon the English penitentials, as well as upon the administration of penance in Ireland. These canons[7] are divided by Wasser-

[1] The so-called Penitential of Adamnan is omitted, as it deals almost wholly with penances for violating taboo on the "unclean."

[2] *Vide infra*, chap. iii, for references in the *Vitae*.

[3] *Vide infra*, chap. v; and *cf. supra*, for similar laws among the Welsh.

[4] See the *Senchus Mor*, ed. W. N. Hancock and A. G. Richey, *Ancient Laws of Ireland* (6 vols., Dublin, 1865-1901), II, 7e, 31; III, 35, 107. Previous writers on penance have overlooked these.

[5] Published with the Irish penitentials in Wasserschleben, 7-8; Schmitz, I, 267; *cf.* H. and S., II, 328-330. For the controversy over their genuineness: Bury, *Life of St. Patrick* (London, 1905); H. and S., *loc. cit.*; Todd, *St. Patrick* (Dublin, 1864), 486-488. Some decisions attributed to St. Patrick are also found in the latter part of the "Old Irish Treatise *De Arreis*," edited by Kuno Meyer, in *Rév. Celtique*, XV, (1894).

[6] The text is in Wasserschleben, 136 *et seq.* in Latin; *cf.* the similar "Old-Irish Treatise *De Arreis*," edited by Kuno Meyer, in *Rév. Celtique*, XV (1894). For comments: Wasserschleben, 48, 289, and his "*Vorrede;*" Kuno Meyer, *loc. cit.*; Wasserschleben, *Irische Kanonensammlung*, 210 and *passim;* and Sägmüller, *KR.*, I, 152 and note 2, with references on the *Collectio Hibernensis*, which used these canons.

[7] *Titles I* and *II* are in Martène, *op. cit., loc. cit.;* Wasserschleben, 136-138; and Moran, *Early Irish Church*, 271 (in part), after Wasserschleben. *Title III* is in Martène and Durand, *op. cit.*, IV, 6; Wasserschleben, 140-141; Moran, *op. cit.*, 272; and partly in Seebohm, *Tribal Custom*, 103, comparing it with secular customs. Critical comments are in Wasserschleben, 7-8 and 282, and in his *Irische Kanonensammlung;* Bellesheim, *op. cit.*, I, 191, with good bibliography, and in his article in *AKKR.*, LIV, 467; also *supra*, under St. Patrick. *Title IV* is in Wasserschleben, 141-142; Moran, *op. cit.*, 272-273; and partly in Seebohm, *op. cit.*, 103, comparing with secular sources. *Title V* is in Mansi, *op. cit.*, XII, 142; Wasserschleben, 142-143; and Moran, *op. cit.*, 273, after Wasserschleben. *Title VI* is in Martène, *op. cit.*, IV, 11 *et seq.;* Wasserschleben, 143-144; and partly in Moran, *op. cit.*, 273-274, after Wasserschleben.

schleben into six titles: *Title I. De Disputatione Hibernensis Sinodi et Gregorii Nasasene Sermo de Innumeralibus Peccatis; Title II. De Arreis* or, in another manuscript, *Canones senodi Hiberniae et Gregorius Nazasenus; Title III. Synodus Hibernensis Decrevit; Title IV. De Jectione,* possibly concerned with evictions. Neither Titles V or VI have any significance for our subject. The canons are of great antiquity, being found in a manuscript of the seventh or eighth century, possibly from earlier sources.

In contrast to the usually severe penances[1] of *Title I,* the canons of *Title II* are chiefly devoted to detailed prescriptions of commutations and redemptions.[2] *Title III* contains penalties for various injuries to clerics, in terms of commutations[3] or, sometimes, of corporal punishment. *Title IV* requires money compensations for various other offences.[4]

Of all these groups of Irish canons *Title II. De Arreis* or *Concerning Commutations* is most interesting for our field because of its influence upon the Penitential of Theodore.[5]

[1] See, especially, cans. i-iii, v-vi, xii-xxi, xxiii-xxvii.

[2] Details are given *infra*, in chap. iii.

[3] *Cf.* Seebohm, *Tribal Custom*, 101-103, after Wasserschleben.

[4] Watkins, *op. cit.*, omits the *Canones Hibernenses.*

[5] *Cf. infra*, chap. iv. For an interesting and valuable discussion of the relations of penitential and secular codes and for the money values of commutations in slaves, etc., *vide* Seebohm, *op. cit.*, 100 *et seq.*

It seems likely that these detailed provisions for commutations or substitution for penance were of considerable effect in supplanting the severe system of the Penitential of Vinnian with very lax commutations and redemptions. Part of these canons are found, with other commutations and quaint penances, in an old-Irish treatise *On Commutations,*[1] of an origin that is probably not later than the eighth century.

The Penitential of Vinnian or Vinniaus, however, deserves most attention because of its important connections with the English and other penitentials. This penitential is from sources[2] that are obscure in general, though it uses the Bible and, possibly, the canons of Patrick[3] and the writings of Cassian.[4] It has been ascribed to a certain Vinniaus, Vinnian, Finnian or Vennian, whose exact identity has not been more definitely established than to suppose that

[1] Published, with comments, by Kuno Meyer, in *Rev. Celt.*, XV, 485 *et seq.*, with old-Irish text and English translation. Meyer assigns it to the Old-Irish Period, with date as above. He edits it from the well-known Bodleian *Codex Rawlinson B., 512, fol. 42b.*, and thinks it is after an old-Irish original which is not extant.

[2] For editions and sources: Wasserschleben, 108-119; Schmitz, I, 497 *et seq.*; also *cf.* Moran, *op. cit.*, "Appendix"—the parts on ceremonies. *Cf.*, also, Wasserschleben, 10-11 and 117, on the great variations in the MSS. used by him. The division by Schmitz, I, 499 into two parts—one for the clergy and one for the laity, in that order—omits the general canons i-iv, ix and xx-xxii; and he includes, among those intended for the clergy, canon vii, which is plainly for the laity. For older editions, *vide* Martène, *op. cit.*, IV, 1 *et seq.*, and D'Achèry, *Spicilegium*, I, 491.

[3] *Vide supra*, this section, under Patrick.

[4] *Vide supra*, on the sources for the Penitentials; Wasserschleben, *loc. cit.*; and *infra*, chap. iii, under the *Octoade*. Vinnian's references to "the opinion of some very learned men" as his authorities is interpreted by Watkins, *op. cit.*, 609 *et seq.*, as probably meaning the British teachers, SS. David and Gildas.

he was either Finnian of Clonard[1] or he of Moville,[2] of a date about A. D. 530 or 540; though either ascription would connote a use of the Penitential in Ireland that was probably very extensive and influential.[3] Aside from the fact that it was extensively followed by various Continental penitentials,[4] the Penitential of Vinnian was much used as a source by those of Theodore, Bede and Egbert.[5] Of all the Irish penitential material it was probably most closely related textually to the English group.

[1] His authorship is asserted by Wasserschleben, 10-11, without producing evidence; Baring-Gould, *op. cit.*, III, 35, 123, without other reason than the fact that Gildas and Finnian of Clonard had met in Wales, and without references; and Vering, in *KLex.*, article on "*Bussbücher,*" apparently following Wasserschleben.

[2] For the authorship by Finnian of Moville: Schmitz, I, 498-499; Bellesheim, *op. cit.*, I, 83, after Schmitz; Moran, *op. cit.*, 137, after Colgan (*Acta Sanctorum*, 189-200); Seebass, in *ZKG.*, XIV, 435 *et seq.*, especially 437, retracting his former argument for Finnian of Clonard stated in his dissertation on Columban's Penitential (1883); also see the excellent discussion *pro* and *con* by Williams, *Gildas*, II, 65 and 178.

[3] Because of the very great and well-known influence of both of them.

[4] Compare the parallels between the Penitential of Vinnian and those of Columban, the pseudo-Cummean, the Penitential of Merseburg, and others noted in Wasserschleben's edition of that of Vinnian.

[5] *Vide infra*, chap. iv, on the sources for the Penitentials of Theodore, Bede and Egbert.

CHAPTER II

The General Operation of Penance

To appreciate fully the operation and influence of penance in Great Britain in the pre-Norman period, it will now be necessary to discuss the operation of penance in general. Many[1] general regulations of penance, as is well known to students in the field, were applicable everywhere to all Roman Catholics[2] and serve to connect the local administration of penance with main stream.[3] Such a discussion will also serve as the basis for a later, comparative study of penitentials and penitential customs[4] in Great Britain and on the Continent, as well as of their reciprocal relations.[5] It will also furnish background for a better understanding of technical phrases and customs that were common to all penitentials.

[1] Many penitential provisions on the Continent served as norms for the British Isles, though the latter differed, to some extent, in some details. It is, however, increasingly the opinion of scholars that the details of the administration of penance varied, in time and place, more than former scholars supposed. *Vide infra,* chs. ii, iii, particularly on public penance.

[2] Greek practice differed in some important ways from Roman Catholic penance; *vide infra,* chs. ii, iii, on public penance, for example.

[3] This chapter does not claim originality, but seeks to connect the conclusions of present authorities with the main thesis. I feel, however, that it may clarify certain important phases of public penance and commutations.

[4] The silence of individual sources on penances may sometimes be supplemented by evidence from contemporary and sometimes earlier sources, but this must be done cautiously. For the developmental relations of English and Continental penitentials, *infra,* chaps. iv, vi.

[5] In such important matters as commutations, public penance, etc., *vide infra,* chaps. ii, iii, vi.

SECT. I. THE GENERAL NATURE AND KINDS OF PENANCE

The theories as to the nature, purpose and forms of penance are familiar to students of ecclesiastical institutions. The two chief theories—viz. that penance was medicinal and that it was punitive—apparently represent different phases of penance, at least so far as its practical effects on the penitent are concerned. From the requirement then, by secular[1] laws, of penance for crimes against them or for other offences, it is evident that the punitive phase of penance was stressed by the secular authorities in the pre-Norman period. Another well-known division of the kinds of penance was into three[2] forms—"canonical," "solemn" and "public;" but, for our purposes, we shall employ a two-fold division—that into private and public penance.

SECT. 2. THE IMPORTANCE OF PUBLIC PENANCE

The connection of public penance with our subject is vitally important for textual and practical reasons. Its ex-

[1] *Vide infra,* chap. v, for such laws among the English. As illustrations of the punitive aspect of penance, see, also, the ancient Irish canons ascribed to St. Patrick(?), in Wasserschleben, 141; the *Canones Wallici,* in Wasserschleben, 124; *Sin. Vict.,* can. iv, in Wasserschleben, 104; *Concil. Berghamstedens.,* capp. 14-15, in H. and S., III, 233-236 (*cf. Laws of Wihtred,* in Liebermann, *Gesetze*); *P. Th.,* can. iv, sect. 5; *Can. Greg.,* can. cviii; *Conf. Ps. Egb.,* can. xxiii; the citations from the Penitentials being to Wasserschleben's edition. Also see the Frankish *Eccles. Insts.,* in Thorpe, *Ancient Laws,* etc., II, 291-299; and the *Law of the Northumbrian Priests,* in Liebermann's edition. *Cf. infra,* chap. vi, for the influence of the Penitentials in supplementing the secular laws with much-needed assistance.

[2] For the familiar forms of penance, in addition to the articles in the encyclopedias, etc., and the *opp. citt., infra, passim, vide* Schmitz, I, 11-36, and Lea, *op. cit.,* I, 18 *et seq.,* and II, 107, 412.

istence in England[1] for at least part of the period from Theodore forward may not be so lightly denied as has been usually the case. Moreover, certain obscure phrases[2] in the English penitentials may be better understood by reference to this institution or parts of it.

The connection between public penance on the Continent and that in England is closer than has been supposed. This is especially evident from the close textual relationship between penitentials of Continental and those of English origin in the latter part of the period.[3] It is significant, too, that this later period of English penitentials, with increasing force, corresponds to that which gives us fullest evidence of the existence of public penance in England, at least in part. If, as seems probable, there was borrowing then by English from Continental penitentials, the comparison of public penance as it may have existed in the two places may shed light upon the nature of such borrowing.

But there remain still more important reasons for investigating the existence and nature of public penance in England in the period of the penitentials selected. In particular, the performance of it, if required, would materially increase the severity of the ecclesiastical punishment and therefore its effect upon the offender and upon the community. To the natural notoriety gained by conviction in a secular court there would thus be added public humiliation before the congregation. Thus the performance of public penance might serve as an important part of a bigger process, of which one purpose was to subject the criminal effectively

[1] *Vide infra,* chap. iii.

[2] For such phrases, *infra,* chap. iii; *cf.* chap. iv, for the English penitentials of the 9th and 10th centuries.

[3] There is abundant evidence, as will be seen in chap. iv, that certain Continental penitentials, compiled when public penance was very prominent, strongly influenced late penitentials in England, in the 9th and 10th centuries, e. g. *Ps. Egb., Ps. Can. Edg.,* etc.

to adverse public opinion; but it would also serve, by public examples, to educate the community to feel the heinousness of crimes. In both of these results public penance might, therefore, supply a valuable agency through which the penitential discipline might supplement the work of the secular.[1]

When put into practice in the Middle Ages, public penance was required particularly for publicly known sins of a heinous character: chiefly homicide, rape, usury, fornication, adultery, perjury, arson, robbery, soothsaying, magic, incest and marriage within the prohibited degrees. It may also have been required for heinous offences that were not publicly known,[2] but this has been denied by many prominent scholars.

The effect of public penance upon the penitent and his community would, of course, vary according to the number, severity and humiliating nature of penitential acts of a public character prescribed in it in any given period. Recent investigation has shown that this number probably varied[3] at different periods and in different localities. It

[1] For the weaknesses of the secular law, necessitating such aid, *vide infra,* chap. v. The period in which public penance may have enjoyed its fullest use—viz., the ninth and tenth centuries—is also that in which the secular government was endeavoring to educate the public to regard crimes as offences against the community. On this, *infra,* chap. v, on the subject "the king's peace"; and *cf.* chap. iii for further details on penance in England.

[2] See the summary of this question for the first six centuries in Rauschen, *Eucharistie und Busszakrament* (Freiburg, 1908, and Eng. transl., 1913, cited hereafter as "Rauschen, *Busszakrament*"), 134, with references. *Cf.* P. A. Kirsch, *Zur Geschichte der kath. Beichte,* 71 *et seq.;* Binterim, *Denkwürdigkeiten,* V, ii, 276 *et seq.;* Funk, *KG.,* 293-294; Schmitz, II, 98; Lea, *op. cit.,* I, 19, 183, and II, 73-74; and more recent discussion by M. J. O'Donnell, *Penance in the Early Church* (revised and enlarged edition, Dublin, 1908). Also *cf. infra,* chap. iii, on public penance as prescribed in the *Dialogue* of Egbert of York.

[3] An interesting controversy has raged over the existence and extent of public penance in the Western Church in the period of the Peniten-

will be necessary, therefore, to describe briefly the individual acts of public penance in their completest forms. Then, by comparing the canons of a given penitential or other source with the complete system of public penance, we can better try to determine whether or not public penance is found in such a source.

In its completest form, public penance was first publicly imposed on the penitent by the bishop, by relegating the former to the penitents, who were divided into classes according to the disabilities and penitential acts required. After a definitely prescribed term of penance, in the class or classes designated at imposition or thereafter, the penitent was at last formally absolved and publicly reconciled., Each of these acts will now be briefly described.

The ceremonies of imposing penance in the early Church are somewhat difficult to determine[1] in detail; but they later gained great annual solemnity in the places and during

tials—the fifth to the eleventh centuries. See an excellent survey of the new and the old views by Koch, in *Historisches Jahrbuch* (*Görres-Gesellschaft*, 1897, 1900), and in *Th. Q.* (1903, 1904), especially the first article, pp. 481-482. The traditional view holds that the penitential stations were native in the West from the beginning. Opposing this, several more recent writers consider that the penitential stations were introduced spasmodically from the East by reformers and that public penance soon declined and was never continuous in existence in the Western Church.

For the traditional view: Sirmond, *Historia poenitentiae publicae* (Paris, 1683), especially capp. 5, 10; Frank, *Busszdisciplin*, 196 *et seq.*; Schmitz, I, 34-35; Watkins, *op. cit.*, 530, 583; Ludwig, in *AKKR.* (1903), pp. 219 *et seq.*

Contra: The articles by Koch, cited *supra;* Funk, *Kirchengeschichtliche Abhandlungen*, I (1899), 196, 384 *et seq.*, and in *KLex.*, II, *s. v.* "*Busse*"; and his article in *Th. Q.* (1886), 363 *et seq.*; a modified acceptance by Hergenröther, *KG.* (1902), I, 315, 418. *Cf.* the previous views of Binterim, *op. cit.*, V, ii, 371 *et seq.* and 368 *et seq.* For others, *pro* and *con*, *vide Jahresberichte, passim*, especially IV (1902), 221.

[1] Lea, *op. cit.*, I, 33-34; Schmitz, I, 34 *et seq.*; Watkins, *op. cit.*, especially vol. i, for excellent texts and comments on the authorities.

the time that public penance was practiced.[1] On the date[2] of formal, solemn imposition,[3] all penitents and those about to become penitents were commanded to present themselves to the bishop, before the cathedral door, in front of the porch. After the penitents had been led into the church, the bishop and the clergy prostrated themselves, and, with tears, sang the seven penitential psalms. After this, the penitents received the laying-on of the hands from the bishop. The latter then sprinkled them with holy water, cast ashes over them, covered their heads with sackcloth and, with sighs and groans, announced that they were to be ejected from the church. He then ordered the clergy to drive them out; and, with chanting, this was done.[4]

According to the traditional accounts of public penance, the penitents were divided early into four parts or stations, sometimes called grades or classes.[5] The first of these,

[1] For an excellent discussion of the geographical and chronological distribution of public penance, *vide* Watkins, *op. cit.*, especially vol. ii, *passim;* also *infra*, on private penance.

[2] *Vide* Watkins, *op. cit.*, 580-581, after Wilson, *Gelasian Sacramentary* (Oxford, 1894), 15; Funk, in *KLex.*, II, 1578; Binterim, *Denkwürdigkeiten*, V, ii, 233 *et seq.*, 294 *et seq.* The day was usually Ash Wednesday.

[3] The bishop imposed his hands upon their heads as a symbol; *vide* Watkins, *op. cit.*, 581, 583, after Regino of Prüm and the *Pontificale Romanum;* the *Pontifical* of Egbert of York, *infra*, chap. iii; and *supra, op. citt.* The penitents were usually clad "in sorbid vestments" or in sackcloth; *vide* Watkins, *loc. cit.* In Spain the date was usually Good Friday; *vide* Watkins, *op. cit.*, 585, after the *Mozarabic Breviary.*

[4] *Vide* the *opp. citt.*, *supra*; also Lea, *op. cit.*, I, 33-34, and Watkins, *op. cit.*, 581-582.

[5] See the standard accounts in *Cath. Ency.*, articles by Hanna and Boudinhon on "Penance" and "Penitential Canons"; Funk, in *KLex.*, II, "*Busse*"; Herzog-Hauck, *s. v.* "*Bericht*," "*Busse*," "*Buszdisciplin*," "*Bussbücher*," etc.; the works on the controversy cited, *supra;* Watkins, *loc. cit.*; Schmitz, I, 19 *et seq.*, 51 *et seq.*, 63 *et seq.*; and Lea, *op. cit.*, I, 24 et seq.

(1) the "weepers" or *flentes,* were really candidates for penance, great sinners who had to await their admission from outside the church. On being admitted they became (2) "hearers," *audientes,* apparently present at divine service until after the lessons and the homily. After a certain time in that station, varying with the offence, the penitents passed into another grade (3) the "prostrated" or *substrati,* so called because they lay prostrate while the bishop, before excluding them, prayed over them and imposed his hands on them. Finally, (4) the *consistentes,* ("standers with"), were apparently present during the whole service but did not receive communion. Penance ended, if satisfactorily performed, with full admission to communion and complete equality with the faithful; though, sometimes, penitents were admitted to communion before the completion of penance. The time for penance in the stations might amount to three, five, ten, twelve, or fifteen years according to the gravity of the sin and the severity of the penitential authority.[1]

But the continuous existence of public penance, at least in its complete form, and especially of the penitential stations on the Continent from the fifth to the ninth centuries is doubtful.[2] On the other hand, the attempts to revive public penance during the Carolingian period are recognised,[3] and this revival may have exercised a profound

[1] *Vide supra.* Some penitentials were severe, some moderate, some lax; *vide supra,* chap. i, and *infra,* chaps. ii, iii, under commutations.

[2] *Vide supra,* this section, for evidence and references on the controversy over public penance in the West.

[3] *Vide* Lea, *op. cit.,* I, 508; II, 73 *et seq.,* 77 *et seq.;* Lepicier, *op. cit.,* 235-236; the decrees of the reform councils of Chalons, Tours, Rheims, Arles, Mainz and Aix-la-Chapelle, summarized in Watkins, *op. cit.,* 700-707; *cf.* 672-676 and his discussion of the work of the councils of Trèves and of Paris; the acts of these synods in Hefele, *op. cit.,* especially vols. iii and iv; and Schmitz, I, *"Einleitung".*

For numerous detailed enactments by great secular princes requiring

influence upon the contemporary system of penance in England. This is very probable because some of the chief leaders of this Continental revival compiled penitentials that were closely related to English penitentials of the ninth and tenth centuries, sometimes serving as sources[1] for individual English penitentials.

Distinct from public penance, as seen in the penitential stations, were certain other acts[2] of a public nature often prescribed for grievous sins. Besides private penances, penitents undertook voluntarily or were forced by authority[3] to wear sombre clothing; submit themselves to scourging; do penance on pilgrimages[4] or in exile or in a monastery;[5] and were sometimes obliged to abandon the carrying of arms[6] for the period of penance. Even imprisonment[7] was sometimes used for heinous or recalcitrant cases.

public penance: Gieseler, *KG.,* II, 54, note 25, and I, 324; to be supplemented by Lea, *op. cit.,* II 84 *et seq.;* and by Watkins, *op. cit., passim,* whose account, however, is sketchy. The discussions by Funk, in *KLex.,* II, *s. v. "Busse"*; by the various encyclopedias; by Lea, *op. cit.,* 74; by Wasserschleben and by Schmitz, are very inadequate. Of particular value are the articles on *"Sendgerichte"*, or synodal courts in Herzog-Hauck and by Dove, in *ZKR.,* XIV and XV; Gieseler, *op. cit.,* II, 54; and Moeller, *Church Hist.,* II, 114.

[1] *Cf., especially, P. Halitgar* and *P. Regino* with *Ps. Can. Edg.* and *Ps. P. Egb., supra,* chap. i, and *infra,* chap. iv.

[2] On these well-known acts, see the articles on "Penance" in the encyclopedias of religion, theology, etc.; and the various works cited in this section.

[3] *Vide supra,* this section, for references on secular laws enforcing penance; also *infra,* chap. v. *Cf.* Watkins, op. cit., 538 *et seq.* and 752 *et seq.,* on enforcement.

[4] *Vide* Funk, in *KLex.,* II, 1577 *et seq.;* Schmitz, I, 63, 150, 153, 275, 291, 405, and II, 100, 320; Lepicier, *op. cit.,* 241 *et seq.*

[5] *Vide* Schmitz, I, 349, 351, 357, 362, 643, and II, 276, 365, 427, 489, 553, 641; Lepicier, *op. cit.,* 143 *et seq.*

[6] *Vide* Schmitz, I, 507-508. For the resentment of the Germanic peoples to penitential prescriptions of dress, relinquishment of weapons, etc., *vide* Moeller, *Church Hist.,* II, 115.

[7] On imprisonment: Schmitz, II, 47, and his article in *AKKR.* (1884); Lea, *op. cit.,* I, 20.

Penitents of whom the above acts were required might be under the ban of excommunication.[1] They might then also be placed under the public curse, cut off from all social intercourse with other Christians, deprived of Christian burial, or practically outlawed.

SECT. 3. PRIVATE PENITENTIAL ACTS

Besides penitential acts of a public nature, private confession [2] and penance were practiced during the period which saw the greatest activity in compiling penitentials, from the sixth century forward. Various forms of expiation were used, including the familiar individual self-denial, self-torture, fasting, and certain forms of redemptions. Among the severe forms of fasting were those on bread and water; or without flesh, wine, beer, mead,[3] and the like. The periods of fasting or of other penances naturally varied according to the offence; sometimes according to motive or degree of the offence or to the physical condition of the penitent;[4] or, in a few cases, even according to his wealth.[5]

In the first period it is probable that the penitent under-

[1] On excommunication: Sägmüller, *KR.*, I, 82, 201, 318, 337, and II, 71, 73, 245, 348, 355, 439, 491, and *passim*. Also see, for England, the laws enforcing penance and the *formulae* for excommunication, *infra*, chap. v.

[2] For the theory that private penance and private reconciliation became substituted for public forms first through the Celtic codes of monastic discipline and that the penitential codes were the means of spreading the new system, *vide* Watkins, *op. cit., passim*. *Cf.*, also, Löning, *KR.*, II, 471-472; and Williams, *Gildas*, II, 178 and note 1. Catholic scholars, of course, favor a Roman origin for private penance.

[3] *Vide* Schmitz, I, 232, 337, 348, 395, 435-436, 744, and the texts for the Penitentials in the standard editions for examples. Also see Lea, *op. cit.*, II, 119; and Rauschen, *op. cit.*, 114, 137-138 and 151.

[4] *Vide infra*, chaps. ii, iii, under commutations; also for distinctions according to individual penitentials, whether severe, moderate or lax.

[5] *Vide infra*, chaps. ii, iii, under commutations. Peculiarities of the Celtic system are described *infra*, chap. iii.

went a continuous fast for a prescribed time, with the exception of Sundays and holy days. But, since the eighth century, the penitential fast was often prescribed for a definite time of the year or of the week, especially the three *quadrigesimae* or quarantines and the *feriae legitimae* or required week-days. The three *quadrigesimae* or quarantines corresponded to the three principal festivals of the year—Easter, Christmas, and Pentecost—preceding the first two but following Pentecost. The *feriae legitimae* were Monday, Wednesday and Friday.[1] Sometimes especially severe fasts—known as "*superpositiones*" or "*superimpositiones*" were prescribed for especially grave cases and apparently referred to fasting beyond the regular time—three o'clock in the afternoon.[2] In addition to the periods mentioned, shorter fasts for less grievous sins were the "*triduana*"—fasts of three days, and the "*septimana*"—or fasts of seven [3] days. Other penalties for both clergy and laity included penance in a cloister,[4] either life-long or for a shorter period; and, possibly, imprisonment, at least for the obstinate.[5]

[1] Schmitz, I, 150. On the *quadrigesimae:* Schmitz, *loc. cit.*, and 65, 162, 237, 577, 764, with many references in the Penitentials; Williams, *Gildas*, II, 277 and note 5; and *infra*, under penances for specific offences, especially in chap. vi, for examples. On the *feriae legitimae:* Schmitz, I, 150, 237, 798. Watkins, *op. cit.*, 604, considers that the *superpositiones* (or *superimpositiones*) were fasts rigidly observed all day.

[2] *Vide* Schmitz, I, 149, 230, 315, 755; Williams, *loc. cit.*, and p. 276, note 3.

[3] *Vide* Schmitz, I, 148 *et seq.* For earlier, longer terms: Schmitz, I, 13, and Rauschen, *Busszakrament, passim*. For peculiar, Irish "black fasts", *infra*, chap. iii. See, also, the works on food prohibitions, etc., *supra*, chap. i, sects. 2-3; and Friedberg, *Aus den deutschen Bussbücher*, 16-19. For fasts in the Anglo-Saxon Laws, *vide* Liebermann, *Gesetze*, II, *s. v.* "*Fasten.*"

[4] *Vide* Schmitz, I, 139 *et seq.*, 156 *et seq.*, 349, 351, 357, 362, 643, 797-798.

[5] *Vide* Schmitz, II, 47, 51, 52; also *supra*, chap. ii, on acts of a public character, for further references. For the practice among the Franks, during the reform period of the synodal courts, *cf.* the excellent article by Dove, in Herzog-Hauck.

SECT. 4. COMMUTATIONS AND SUBSTITUTIONS

Besides the above penances, provisions were made for other forms of expiation by penitential-surrogate, commutation, redemption, and substitution or delegation. Such alleviations[1] arose originally for cases in which the performance of the above fasts and the like was impossible by reason of age, occupation, or other disability of the penitent. Penitential codes sometimes give directions as to the number of psalms or genuflections, or prostrations, or the amount of pilgrimage or of money allowed as equivalents to definite periods of fasting of various degrees.[2] Money redemptions might be either in the form of money paid directly to the church for use in good works,[3] or by alms[4] to the poor, or sometimes by freeing a slave.[5]

During the ninth century, the allowing of commutations

[1] On the theory underlying commutations and "good works," *vide* Lepicier, *op. cit.*, 236 *et seq.*, and the various Catholic and Protestant encyclopedias. For details concerning the British Isles, infra, chap. iii.

On commutations in the Penitentials: Schmitz, I, 144 *et seq.*, and under the texts of the codes in the standard editions, especially *P. Merseburg*, can. xliii; *P. Eccles. Germ.*, cans. ii-v, viii, xx, xi, xv-xvi, xviii, xxxi; and *infra*, chap. iii. On the kinds of commutations: Lepicier, *op. cit.*, 222-233, 236-273; Lea, *op. cit.*, II, 150 *et seq.*, chap. xviii, 59-64, 146-159, I, 13; Dove, in *ZKR.*, XIV, for commutation in the synodal courts. On commutations as related to the Penitentials, see also Brat, *Les livres pénitentiaux et la pénitence tariffée* (Brignals, 1910).

[2] Schmitz, I, *loc. cit.*, and other references *supra*. On genuflections: Schmitz, I, 145, 152; *cf. infra*, chap. iii. On psalms instead of penance: Schmitz, I, 144-145, 148, 237; *infra*, chap. iii; and Lepicier, *op. cit.*, 238 *et seq.* On redemptions for money: Schmitz, I, 144 *et seq.*, 223, 563, 572, 586, 605, 613; and *infra*, chap. iii. On restitution and other forms, *infra*, chaps. iii and vi.

[3] *Vide supra.*

[4] *Vide* Schmitz, I, 144, 148, 237, 326, 488; and *infra*, chap. iii.

[5] Or a serf, after serfdom supplanted slavery: Schmitz, I, 277 *et seq.*, 404, 499, 507, 577, 694. This form particularly characterized the Celtic penitentials; *cf. infra*, chap. iii.

and redemptions became so extensive that numerous reform councils protested against the lax extension of commutations by numerous arbitrary penitentials.[1] Though these protests produced some results in encouraging the compiling and use of severer, more authoritative penitential codes, yet they were unable to suppress the growing use of commutations and the shortening of the periods of penance.[2] In some cases, substitutes might be hired or otherwise used by powerful, wealthy men,[3] though this practice seems to have been limited; and, at least in a few cases, associations of friends[4] might be formed to perform penances for each other.

The source for the custom of money redemptions is generally considered to have been the secular system[5] of money compositions for wrongs to individuals. Apparently the first penitential codes to allow such redemptions, either to the Church or as partial redemption by payment of compensation, were the Irish and the English.[6]

[1] *Vide* supra, chap. i; also *infra*, chap. iii, for commutations in Great Britain and Ireland.

[2] Lea, *loc. cit.*; Lepicier, *Hist. of Indulgences, passim.* See especially the numerous commutations, etc., in *P. Ps.-Th.*, Wasserschleben, 622, and the comment supra, chap. i; *cf.* an eleventh-century example in Wasserschleben, 625 *et seq.*; also late examples in Schmitz, II, 415 *et seq.*, 418, 409 *et seq.*, 411, 413, 419, 457, 458 *et seq.*, and others; also *infra*, under *P. Ps.-Bede*, *P. Ps. Egb.*, *Can. Edg.*, and others in chap. iii, where the matter is more fully discussed.

[3] Especially according to *Can. Edg.*, a Frankish compilation which was apparently introduced into England late in the period of our field; *vide infra*, and chaps. i, iii.

[4] Robertson, *CH.*, II, 1, 238, after council of Clovesho. Possibly this may have been influenced by the so-called "*frith-gilds*" for the payment of secular compositions; but see Liebermann, *Gesetze*, II, *s. v.*

[5] Schmitz, I, *loc. cit.*, and the various religious encyclopedias for this familiar view. *Cf.*, also, on enforcement, *infra*, chap. v.

[6] *Vide* Schmitz, I, 146; Funk, in *KLex.*, *s. v.* "*Busse*"; Wasserschleben, "*Vorrede*", and others; *cf. infra*, chap. iii.

Numerous Protestant writers,[1] in criticising the influence of the Penitentials, have unduly emphasized the evil effects of penitential commutations and compositions in developing the idea that immunity from penance could be purchased. Viewing the matter almost entirely from the ecclesiastical viewpoint, their perspective has been too narrow to include the very strong influence of the Penitentials as supplementing the somewhat weak secular laws. As will be seen in greater detail below,[2] penitentials often required the payment of the regular secular compositions for crime, and punished by additional penance failure to do so. In so doing, as well as in demanding restitution, they proved powerful aids to the secular law. The very broad extension of the system of commutations for money to practically all sins, in those penitentials which were condemned by the reform councils of the ninth century, lost sight of the original purposes of alleviations for cases where the performance of severe penances was impossible because of physical infirmity or laborious occupations.

Its greatest evil was not merely in introducing the payment of money commutations to ecclesiastical authorities in the place of penance. It lay chiefly in developing a tendency towards discrimination in favor of the powerful and wealthy, such as were able to pay money redemptions.[3]

[1] Gieseler, *KG.*, II, i, 525-529; Robertson, *Church Hist.*, I, 553, II, 238 and notes; *DCA.*, II, 1608; Schaff, *Church Hist., passim;* Milman, *Latin Christianity* (London, 9 vols., 1883), I, 153; Lea, *Auricular Confession*, II, 104 *et seq.*, but *cf.* 106-107; Grimm, *DRA.*, 661 *et seq.;* Turner, *Hist. of the Anglo-Saxons* (London, 3 vols., 7th ed., 1852), III, 86; Phillips, *Deutsche Geschichte*, II, 342-343, cited by Alzog, *Church Hist.*, I, 166; but particularly Friedberg, *Aus den deutschen Bussbücher*, 39-40. Also *vide infra*, for the influence of penance and the Penitentials in reinforcing secular laws.

[2] *Vide infra*, chap. vi.

[3] As the alternative for money redemptions was the performance of penance, the poor were naturally forced to the latter and thus, in a sense, discriminated against, especially as money payments were probably little hardship to the rich; but the same might be said of a modern system of fines in the courts as alternative to imprisonment. Other methods of expiation—conversion of others, charity, forgiveness of offences, and others. On various lists of methods of expiation, e. g. by Caesarius of Arles and Origen—Lea, *op. cit.*, I, 82 *et seq.* and *passim.*

But one must bear in mind that this was an age in which money compensations were nearly the only method of the secular laws for punishing crime, and therefore be thankful that the Church provided supplementary penalties in addition to those of the secular law. To obtain an accurate and fair estimate of the socialising tendencies of that age, one must view the total influence of both Church and State in penalising crime; and not make the mistake of "reading in" modern ideals or of viewing the two systems of law separately.

Furthermore, the mistake is made of attributing a system of commutations to the Penitentials *en masse.* Whereas there were actually three classes or stages: (1) the earlier Celtic and English penitentials, which generally used commutations scarcely at all; (2) the succeeding codes, which greatly exaggerated them; and (3) the severe, reactionary penitentials that appeared on the Continent in the ninth[1] century. In these classes or stages, there were, of course, sub-varieties or degrees and individual differences; but on the whole, the generalisation above is valid. With the exception of the Irish *Canones Hibernenses* and the allied old-Irish treatise *De Arreis,* which are very lax, (1) the severe penitentials chiefly include, in particular, those of David, Vinnian, Gildas and Theodore, with others before the fifth century and the early Greek penitentials. Among

[1] Further detail will be found in chaps. i, iii and iv, under individual penitentials and commutations; *cf.*, also, chap. vi, *passim,* as regards penances for individual offences, etc. Lea, *op. cit.*, II, 103 *et seq.*, remarks on the contrasting severity and laxity of two classes of penitentials in penancing perjury but fails to make the distinction sufficiently general.

(2) the laxer penitentials were many of Frankish origin. While, (3) in the ninth century reaction were, e. g. those of pseudo-Bede, pseudo-Egbert, pseudo-Theodore, the Roman group and others.

SECT. 5. THE PENANCES OF CLERICS

For clerics, certain special penalties [1] were prescribed, as well as many of the foregoing and longer periods of penance. The clergy were not to be subjected to public [2] penance; but, none the less, they must perform penance. In contrast to the social discrimination in favor of rank evidenced by the secular laws, numerous passages of the Penitentials provided increased penances as the rank of the ecclesiastic undergoing penance was higher. In addition, the clergy were, naturally, subject to certain well-known, pecular penalties as ecclesiastical discipline and, in serious cases, might have their status profoundly affected.

Foremost among special penalties for clerics were deposition, deprivation, degradation and suspension.[3] According

[1] On penances for clerics in general: Schmitz, I, 125 *et seq.*, 248-249, and under individual offences: Lea, *op. cit.*, I, 38 *et seq.*, 45-46; *infra*, chap. vi, under individual offences; but particularly the excellent articles (Catholic) in Vacant et Maugenot, *Dictionnaire*, and in Herzog-Hauck (Protestant), under the heads for clergy, deposition, degradation, penance, suspension, etc. The present work omits discussion of the well-known controversy over the "indelible character". For peculiarities of clerical penances, see also Funk, in *KLex.*, II, 1568.

[2] Lea, *op. cit.*, I, 48-49; II, 21, 43; Schmitz, I, 125-128. According to Binterim, *Denkwürdigkeiten*, V, ii, 281 *et seq.*, the higher clergy were exempt from public penance; *cf.*, also, Rauschen, *Buszsakrament, passim*. The *Dialogue* of Egbert of York prescribes that persons who had committed certain heinous offences that involved public penance were not to be ordained or, if already ordained, must be deposed; *vide infra*, chap. iii, under public penance.

[3] On these penalties: Schmitz, *ut infra;* Kober, *Deposition und Degradation* (Tübingen, 1867); but especially the recent work in Vacant et Maugenot, *Dictionnaire*, arts. "*Degradation*" and "*Deposition*". Also *cf.* the article by Kober on deposition in F. X. Kraus, *Realenzyklopedie der christlichen Altertümer* (Freiburg, 1862).

to Vacandard,[1] deposition and degradation were synonymous terms in Christian antiquity and up to the twelfth century. Deposition deprived clerics of all the prerogatives of the order or jurisdiction which they had enjoyed; and took away their benefices, honors and dignities. Besides these penalties, the deposed were formally thrust out of the clergy and ceased [2] legally to be members of it. In consequence, they lost the right to communicate as clerics and must receive [3] as did laymen. In obstinate, grievous cases of continued insubordination after deposition, they might even be deprived of the right to lay communion and, possibly, sometimes be relegated among the penitents.[4]

Constituting one of the severest penalities used by the Church against clerics, deposition was employed for the most grievous offenses,[5] especially those of a notorious character. Among the English in the pre-Norman period, the secular laws sometimes prescribe degradation for the following: homicide, striking, complicity in theft, receiv-

[1] In Vacant et Maugenot, *Dictionnaire, loc. cit.*, col. 451; *cf.* limitations, *infra*.

[2] Vacandard, *loc. cit.*, cols. 452 *et seq.*; Kober, *Deposition*, etc., 26 *et seq.;* Schmitz, I, 128, 130, 131, 797.

[3] Must receive "*communio laica*," according to Vacandard, *loc. cit.*, cols. 455-457; outside the "*cancelli*." *cf.* Schmitz, I, 130-131, 331, 476, 532, 598, 622, 662, 731, 811, and Kober, *op. cit.*, 39 *et seq.*

[4] Rarely. *Vide* Vacandard, *loc. cit.*, col. 456; Kober, *op. cit.*, 61; Binterim, *Denkwürdigkeiten*, IV, *Thl.* 3, *S.* 501 *et seq.;* VII, *Thl.* 1, *S.* 63; V, *Thl.* 3, *S.* 282 *et seq.*

[5] For deposition in the ancient Church, *vide* Vacandard, in *loc. cit.*, cols. 472 *et seq.*, and particularly cols. 475-487, sometimes citing the Penitentials. For the English secular laws, *vide* Liebermann, *Gesetze* II, *s. v.* "*Degradation*", "*Cleriker*", "*Geistliche*", "*Cölibat*", etc.; and under individual crimes. The *Dialogue* of Egbert of York, *Interrog.*, XV, prescribes deposition for the following, if ordained persons: idolaters, aruspices, diviners, magicians; false witnesses; those contaminated by homicide or by fornication; thieves; perjurers, etc. *Vide* H. and S., III, 410, and *cf.* Thorpe, *Ancient Laws . . . of England*, 323.

ing consecration to office outside one's own diocese, except by permission of one's diocesan, etc., often in addition to other penalties. The ancient Church inflicted deposition for homicide, fornication, adultery, theft; sometimes for usury, *lèse majesté*, idolatry, schism, paganism, simony, marriage of the clergy (when acted against), drunkenness, insubordination, etc. Deposition affected not only the ecclesiastical status of the deposed; it might also carry with it the loss of the various valuable privileges [1] which had been granted the clergy by the secular governments. In extreme cases the deposed might even be reduced to earn his own living by lay work; though the Church might, sometimes, continue to support him, in case of old age or sickness, or through humanity or fear of scandal.

In place of complete deposition from clerical office, offending clerics might suffer partial degradation or demotion to an inferior rank. They might be suspended temporarily or endure lasting demotion,[2] according to circumstances.

In order to control the private penances of deposed clergy, the Church often directed that they take up residence in a cloister,[3] there to perform, undisturbed, the penance imposed.

[1] Rarely, in extreme cases: Vacandard, *loc. cit.*, cols. 456 *et seq.*, after Kober, *op. cit.*, 79-95. On the contrast with the more lenient practices of the modern Church, *ibid.*, cols. 472-473. On indulgences to deposed clerics, *vide ibid.*, cols. 453, 455 and 458.

[2] Vacandard, article cited, cols. 460-461, after Kober, *Die Suspension der Kirchendiener* (Tübingen, 1862), 113-129; also for England, *cf.* passages in Anglo-Saxon Laws in Liebermann, *loc. cit.* Liebermann, *op. cit.*, II, *s. v.* "*Degradation*" no. 2 a, remarks, after Richter-Kahl-Dove, *KR.*, 789: "Die Absetzung vom geistlichen Amt ist im 9 Jh. noch identisch mit Ausschieden aus geistlichen Stande."

On the ceremony of deposition, *vide* Du Cange, *s. v.* "*ordo*," "*exordinare*."

[3] On the exclusion of clerics in a monastery: Vacandard, the article cited, cols. 458-459, after Kober, *Deposition*, etc., pp. 75-78; Schmitz, I, 139 *et seq.*, 249, 797-798; and many references in the texts of the Penitentials in the standard editions, *passim*.

Such penance in the cloister was directed by the bishop [1] or, in Celtic centers, possibly by abbot-bishops.[2]

SECT. 6. THE DIRECTION OF PENANCE AND OF CONFESSION

The early direction of the adminstration of penance and of confession, the object of a famous controversy [3] between Catholics and Protestants, does not here concern us in its various aspects before the latter part of the fifth century, when our group of penitentials begins.

In the directing of penance, five questions are especially prominent. (1) Who imposed penance? (2) Who supervised its performance? (3) Who reconciled the penitents? (4) Was penance compulsory or voluntary? (5) How frequently did confession occur? We shall treat these questions in connection with public and private penance and the administration of confession and absolution from the fifth century forward.[4]

In the early Church, confession was at first apparently to the bishop, in case of public sins to be expiated by public penance; and public sins were to be confessed publicly. At an early time,[5] confession became private,[6] in the main,

[1] Schmitz, I, 141-142; Hefele, *op. cit.*, III, 762 and *passim; cf. infra*, sect. 6.

[2] According to the theory of those who maintain that private penance developed in and spread from Celtic monasteries; *vide supra*, this chapter, on private penance.

[3] On this controversy, we consider it unnecessary to give citations here, other than to note, in passing, the works on penance listed *infra* in the "General Bibliography".

[4] An excellent bibliography on confession, including both sides, is in Rauschen, *Buszsakrament*, 150 *et seq.* and nn., and *passim*.

[5] The early office of penitentiary priest was abolished by Nectarius in A. D. 391. *Vide* Funk, in *KLex.*, II, *s. v.* "*Buszdisciplin*"; Rauschen, *op. cit.*, 133; Sägmüller, *KR.*, II, 45. For the early direction of penance by the bishop, *vide* Binterim, *op. cit.*, V, ii, 187-188; Schmitz, I, 62, 142-143, and II, 42, 70, 573; Funk, in *KLex.*, II, 1569-1570.

[6] *Vide supra*, this chapter, under private penance.

especially after the reign of Pope Leo the Great,[1] (A.D. 440). For some time there seems to have been some divergence of opinion[2] over the relative importance of confession, expiation, (*satisfactio*), and absolution. But, however that may have been, private confession to the priest was recognised as a wide-spread institution during the period of the Western penitentials.[3]

Bishops still continued, however, to have the power to direct penance in extreme instances, at least to the extent of requiring reports from such cases[4] by the priests. In the Frankish kingdom of the ninth century, supervision became particularly thorough by bishop's visitation and synodal court,[5] as well as by the revival of public penance. Increasingly, however, the tendency was to develop the practice of private penance, under the direction of the priest, with the gravest offences reserved to the bishop.[6] At times during this period, both private and public penance probably coexisted as contemporary, complementary forms.

The power to reconcile penitents undergoing public penance was vested in the bishop, but in the case of the dying

[1] Batiffol, *Études*, I, 153-154, after Leo's epistles.

[2] *Vide* Herzog-Hauck and *DCA.*, articles on confession; also the various Catholic encyclopedias.

[3] *Vide supra*, this chapter, under private penance; also *infra*, chap. iii, for confession in the British Isles.

[4] Schmitz, I, 158 *et seq.*, 142-143, and II, 42, 70, 90-91, 253. On the synodal courts see, particularly, the excellent accounts by Dove in Herzog-Hauck; in *ZKR.*, XIV, 119 *et seq.;* and in Richter-Kahl-Dove, *KR.* (8th ed.), 597 *et seq.*, 833 *et seq.*

[5] *Vide supra*, on the bishop; also *supra*, this chapter, under public penance.

[6] *Vide supra*, on the power of the bishop; also *supra*, this chapter, under private penance, for controversy over the direction of private penance from the Celtic monasteries. For the controversy over public penance, *supra*, this chapter and *infra*, chap. iii.

might be performed by a priest or even by a deacon.[1] But the growing supervision of private penance by priests brought with it absolution also by the priest in cases of private penance. As a general result, from the late fifth century forward, reconciliation for sins requiring private penance was granted by the priest.[2]

On the question of whether confession was compulsory or voluntary, opinions are very divergent. But it seems that the practice of confession was strongly urged during this period, and that it was greatly encouraged by special privileges granted to communicants by the secular laws, and by similar laws directing partial commutation of secular penalties and the like.[3] Frequency of confession was largely left to the individual, though Christians were urged to communicate frequently.[4]

[1] On reconciliation in the early Church: Funk, in *KLex.*, II, 1564; Binterim, *op. cit.*, V, ii, 302 *et seq.;* Koch, in *Historisches Jahrbuch* (*Görres-Gesellschaft*, 1897), p. 493; and *supra*, this chapter, under the controversy on public penance.

For reconciliation of the dying even before completing penance: Funk, *loc. cit.*, 1565; Schmitz, II, 251, 275; Rauschen, *op. cit.*, 146 and *passim;* and the Anglo-Saxon *Laws of Edward and Guthrum*, can. iv (Liebermann ed.).

For the power of the bishop over reconciliation: Lea, *op. cit.*, I, 12-13; *infra*, on the ceremonies of reconciliation; but particularly *P. Th.*, cans. v, vi (Wasserschleben edition). For the later power of the priest: Binterim, *op. cit.*, V, ii, 187-188, 189-190; Lea, *op. cit.*, I, 73, 313; also *supra*, this chapter, under private penance.

[2] *Supra*, this chapter, under private penance; and *infra*, chap. iii. On the danger of confusion on this point, *vide* Batiffol, *Études*, I, 198; and an article by Boudinhon, in *RHLR.* (1897), 306 *et seq.*

[3] *Vide infra*, chap. v.

[4] See the references on confession, *supra*, sect. 6. Watkins maintains that, from A. D. 450-650, there were two classes: those who came forward voluntarily and those who were, for notorious offences, enforced by authority; but that "the mass of the Christian population, except for death-bed ministrations, stand outside." *Vide* Watkins, *op. cit.*, 537 *et seq.*

The same authority contends that, during this period, confession and

SECT. 7. RECONCILIATION

In the early Church reconciliation was given only after penance had been completed.[1] This continued to be the basic principle from A.D. 450-950, but with a growing tendency to alleviate, in certain cases,[2] by means of redemptions of various kinds. Various terms were used for reconciliation, such as : "To return to the church," (*"redire ad ecclesiam"*), "to be recalled," (*"revocari"*), "to be admitted to the church," (*"admitti ad ecclesiam"*), "to receive the right of communion," (*"jus communicationis accipere"*); and references to receiving the "kiss of peace", together with other terms.[3]

In public penance, the bishop held a consultation with his priests and deacons before reconciling the penitents, in order to determine which of them deserved readmission.[4] Public reconciliation, when practiced, took place just before mass on Holy Thursday or Good Friday.[5] After recita-

private penance grew up in Celtic centers; that, from A. D. 650-950, it spread in England and on the Continent until, under Theodore, recurrent confession was coming to be the habit of the devout life; and that, thereafter, its use gradually prevailed until annual confession was made compulsory by the council at Rome, in A. D. 1215. *Vide* Watkins, *op. cit., loc. cit.,* 654 *et seq.,* 761 *et seq.; contra,* the Catholic authorities mentioned in the articles on confession, etc., in the Catholic encyclopedias.

[1] Koch, in *Historisches Jahrbuch* (1897), 488-499; Binterim, *Denkwürdigkeiten,* V, 302 *et seq.*; and *infra,* chap. iii, for usages in the British Isles. *Contra,* Watkins, *op. cit.,* 495.

[2] Schmitz, I, 28, 31, 509; Funk, in *KLex.,* II, 1564; and *infra,* chap. iii, under commutations.

[3] Binterim, *loc. cit.;* Koch, in *Historisches Jahrbuch* (1900), pp. 488 *et seq.;* Schmitz, *loc. cit.;* Watkins, *op. cit.,* 611 *et seq.;* also *infra,* chap. iii, under reconciliation, for other terms.

[4] Watkins, *op. cit.,* 581 *et seq.,* omits this council; but it is mentioned in Lepicier, *op. cit.,* 236 *et seq.*

[5] On Holy or Maundy Thursday in the church at Rome and generally in the West: Funk, in *KLex.,* II, 1565; Batiffol, *Études,* I, 163; Rauschen, *op. cit.,* 146. Good Friday was so used in Spain and the Ambro-

tion of the penitential psalms and the litanies, at the foot of the altar, the bishop reminded the penitents of their obligation to lead, henceforth, an upright life. Then, with lighted candles in their hands, the penitents were led into the church; prayers, antiphons and responses were said; and, finally, public absolution was given.[1]

In private penance,[2] reconciliation was administered privately[3] by the priest. The form of private absolution in the early centuries is difficult to determine, though it was usually in the form of a prayer[4] until the thirteenth century; but Watkins believes that nowhere was the Eucharist itself an actual means of absolution. Reconciliation in the private system apparently had no definitely distinctive ritual. It seems to have consisted in the acts previously mentioned among the terms[5] employed for reconciliation by the Penitentials.

sian Church, *vide* Lepicier, *loc. cit.;* Morinus, J., *Commentarius hist. de disciplina in admin. sacram. poenitentiae,* Lib. ix, cc. 28, 3 *et seq.* At Cologne, reconciliation was celebrated on Palm Sunday; *vide* Lepicier, *op. cit.,* 230; Du Cange, *s. v. "Poenitentia", "Absolutio" "Reconciliatio";* Watkins, *op. cit.,* 583 *et seq.*

[1] *Vide* the *opp. citt., supra,* this section and the section on public penance; also chap. iii, under public penance. The latter gives references to the ceremonies in the pontificals. The forms are also described in the various *ordines ad dandam poenitentiam* prefixed to some Continental penitentials and to some of Continental origin: e. g. pseudo-Bede I, the pseudo-Roman Penitential and others; see the texts in Schmitz's edition, *passim.* Some sacramentaries also contain *ordines* for imposing penance and for reconciliation; *vide* Sägmüller, *KR., passim,* for editions, etc.

[2] For the thesis that private penance first developed in Celtic and English centers, chiefly monasteries, and that it afterwards spread elsewhere, *vide* Watkins, *op. cit., passim; cf. infra,* sects. 1-2, under private penance, etc., for other references.

[3] Watkins, *op. cit.,* 493-494.

[4] *Ibid.,* 496.

[5] *Vide supra,* this section, for these terms, and *infra,* chap. iii, under reconciliation. For the controversy over the meaning of *"ecclesia,"* in such terms as *"admitti ad ecclesiam", vide supra,* sect. 2, for the recent writers on public penance, particularly the work of Koch, Ludwig, d'Alès and Batiffol.

CHAPTER III

The Operation of Penance in Pre-norman Times

SECT. I. INTRODUCTORY

As the starting-point for the discussion of penance among the peoples in question, as for the Church in general, appears the well-known distinction between degrees or classes of sins.[1] The common distinction between sins made by the Penitentials was that of capital and lesser—"*capitalia crimina*" and "*peccata minora.*"[2]

The capital sins or vices were usually grouped by the Celtic and English penitentials in the *Octoade* or group of eight capital sins, formed on the model furnished by Cassian.[3] These eight consisted of pride, envy, unchastity,

[1] For the following account of penance in the British Isles the present writer has found of particular value the sketches by Hanna, in *Cath. Ency.* XI, 632-633 and by Thurston, in *The Tablet,* (London, Feb. and Mar., 1905). He agrees with most of their conclusions but feels constrained to note their uncritical use of spurious matter as genuine and their neglect of much valuable evidence and many important conclusions, both from the sources and from recent writings. For further critical notes on the authorities, *infra,* the "General Bibliography."

On classes of sins: Lea, *Auricular Confession* II, 238, 258 *et seqq.*; Rauschen, *Buszsakrament,* 158 *et seqq.*; *Schmitz* I, 191, 575, 502, 594, 620, 768, 11-12, 13, 55, 59, 159.

[2] E. g. *P. Egb.* cans. i-ii, in Wasserschleben 233-234; H. and S. III, 419-420; Schmitz I, 575. *Cf. P. Bede,* cans. xxvi-xxvii.

[3] Schmitz I, *locc. citt.* and 208, 191, 229, 230, 307, 697, 666, 519, 566, 761, 192; also, *supra,* chap. i, on the sources for the Penitentials. *Cf.,* also, the Frankish *Ecclesiastical Institutes,* can. xxxi, in Thorpe, *Ancient Laws,* etc., p. 482; and comments on its origin by Hörmann, in Fitting's *Mélanges* II (Montpellier, 1908), *passim.*

anger, bitterness, vain-glory or sadness of the world,[1] gluttony and avarice.[2]

In this list, the concept is that of sins of thought. The list of actual misdeeds began with murder or with shedding of blood,[3] or sometimes with fornication,[4] and, with slight variations in order, included offences that were the actual working out of the above states of mind.[5] It is interesting, also, to note that, in contrast to the secular laws of the time, the Penitentials differentiated degrees of some crimes —e.g. murder—according to intent or other extenuating circumstances. In so doing, they may have been partly influenced by the concepts of Roman law, transmitted through the ecclesiastical canons; and partly by Christian teaching.[6]

[1] "*Tristitia seculi;*" *cf* "*accidia,*" in Watkins, *Hist. of Penance* 703, note 3.

[2] Schmitz, Wasserschleben, *locc. citt. Cf.* Löning, *KR.,* 471-472 and note 1. *Vide P. Egb.,* can. i, in Schmitz I, 575; Wasserschleben and H. and S., *locc. citt.: "Nunc de capitalibus criminibus:"* "Nunc igitur capitala crimina secundum canones explicabo. Prima superbia: invidia, fornicatio, inanis gloria, ira longo tempore, tristitia seculi, avaritia, ventris ingluvies." But sometimes, as in this case, there were citations from other fathers as well—e. g. Augustine. *Cf.* the Anglo-Saxon Aldhelm's metrical *De Octo Principalibus Vitiis,* mentioned by Cutts, *Parish Priests,* etc., (London, etc., 1898), 214; and Bridgett, *Holy Eucharist,* (1 vol. ed., London, 1908), 228.

[3] *Vide* Schmitz, and other works cited *supra, passim. Cf. P. Vinn.,* v *et seqq.,* xviii *et seqq.; Can. Hibern., passim,* in Wasserschleben 136 *et seqq.; P. David, passim; Syn. Br., passim;* all according to Wasserschleben's texts. But *contra, Syn. Vict., passim.* For others, *infra,* under individual codes; and *supra,* chap. i.

[4] *Cf. supra.*

[5] *Supra,* chap. ii; *infra,* chap. v.

[6] *Supra,* chap. i. *Cf. infra,* chap. v, on the attitude of the Germanic secular laws.

SECT. 2. THE FORMS OF PENANCE IN THE BRITISH ISLES

The forms of private penance employed by the Celtic and by the English penitentials were, in general, much the same as those described[1] above for the Continent. The Celtic penitentials, however, used more frequently the severe *superimpositiones*[2]—or all-day fasts—and the Celtic usages[3] in private penance had several other peculiarities. Quaint Irish[4] penances, for instance, sometimes consisted in sleeping in waters or on nettles or on nutshells or with a dead body in a tomb; fasting "black fasts;" besides peculiar traits of the Irish *Feil* or vigil. In the practices of commutation and of public penance there was so much variation at different periods in the British Isles that separate discussion will be necessary.

Regarding public penance, general[5] opinion among scholars has usually interpreted a reference in the Penitential of Theodore to mean that public penance never existed in the Irish and British Church before Theodore nor thereafter. On the contrary, however, Kliefoth[1] has claimed that the British-Irish Church knew public church-penance and that it was first completely suppressed by private penance in the Anglo-Saxon Church; while Pijper[2] claims that public penance was practised in the Anglo-Saxon Church also. For the early British-Irish Church, however, very few references[3] exist which might refer to public penance and these are very ambiguous; while the references in the Anglo-Saxon penitentials are quite different. Hence the subject requires separate treatment for these different periods.

[1] *Vide supra*, chap. iii, sect. 3.

[2] For examples, see provisions in the penitentials of David, Vinnian, Gildas and the Welsh synods, in Wasserschleben 102, 103, 105-107, 109.

[3] *Vide* Gougaud, *Les chrétientés celtiques*, (Paris, 1911), chap. iii, sect. 12; and *infra*, on commutations, this chapter.

[4] For peculiar Irish penances, *vide* Bellesheim, *Geschichte der katholischchen Kirche in Irland*, (3 vols., Mainz, 1890-1891), I, 608-609 and his excellent references; an article dealing with the Irish *Feil* or vigil, in the *Dublin Review* III, s. xii, 345 *et seqq.*; but particularly the text of the old-Irish treatise *De Arreis—On Commutations*, edited by Kuno Meyer in *Rév. Celt.* XV, (1894), *passim*. "Black fasts" were a peculiar Irish fast without "white meats"—milk, butter, cheese and eggs.

[5] For opposition to the existence of public penance in the British Isles at any time see the articles on penance in the encyclopedias of theology, of religion and of liturgy; the editions of the Penitentials, especially those of Schmitz and Wasserschleben, *passim;* Löning, *KR.*, II, 471, with his excellent references. The reference used is *P. Th.* I, can. xiii, sect. 3.

SECT. 3. CONFESSION AND PENANCE IN THE IRISH CHURCH

On the question of public penance in this Church, the sources[4] for confession and penance are mostly ambiguous or silent. References to confession before others do not mention public ceremonies and indicate that the priest gave absolution, rather than the bishop, who reconciled elsewhere

[1] Kliefoth, *Liturgische Abhandlungen*, (1854), II, 139, 151, cited by Löning, *KR.*, II, note 2, with opposing arguments.

[2] Pijper, *Bœte en Biecht*, II, 42-44, with additional citations from Alcuin, the Council of Clovesho and the Penitential of Egbert. Watkins, *op. cit., passim*, opposes the existence of public penance in the British isles at any time.

[3] *Vide Can. Hibern.*, Tit. I, can. xii, in Wasserschleben; Kliefoth, *loc. cit.* Watkins, *op. cit.* 587 and 603, has text and comment on a decree erroneously ascribed to St. Patrick, probably of date A. D. 475 (?), can. iii: "That the abbat see to whom the power of binding and loosing be applied (*attribuetur*). If the penance be with weeping and lamentation and sad attire in confinement, it may be shortened and tempered." *Cf.* H. and S. II, ii, 333. Watkins, *op. cit.* 603 comments on the possible reference to public penance but notes the absence of any public reconciliation by the bishop.

[4] *Vide* Hanna, in *Cath. Ency.*, articles "Penance" and "Confession;" also our comments *supra*, sect. 1, notes; also Watkins, *op. cit., locc. citt.* and the articles in Hastings' *Encyclopedia*, etc., under the same heads as above.

in the case of public penance. This silence is also found concerning penitential stations. The only definite, explicit reference[1] to anything resembling them apparently refers to a minor offense. From the above references we would, therefore, conclude that the ceremonies of public penance were absent from the Irish Church. The importance of this conclusion for the Celtic Church in England and for parts of the Continent that were chiefly evangelised by Irish missionaries is obvious.

Private confession[2] evidently existed in the Irish Church during the period in question. This is shown by frequent references in the sources to confession to an ecclesiastical confessor; by frequent provisions in the penitential codes; and by the fact that the secret character of these codes, possessed only by the clergy, necessitated confession of the laity to them.[3] In all cases, confession was necessary before communion. But, in the early passages, the frequency of confession was not specifically stated;[4] it was apparently left to the individual, though frequent confession was urged.

[1] For references, *vide supra*, sect. 2, notes. For the rôle of Celtic missions and monastic centers in developing and spreading private penance and penitentials, *vide* Watkins, *op. cit.* 537 *et seqq.*, 620 *et seqq.*, 688 *et seqq.*, 755 *et seqq.* and *passim*; also *supra*, chap. ii and *infra*, this chapter, under private penance and Celtic penitentials.

[2] See the article by Hanna in *Cath. Ency.* and its references for further details; also Watkins, *op. cit.*, *passim*, 606.

[3] Schmitz I, 162, 142 and Vering, *loc. cit*, p. 1; *cf.* also Lea, *Auricular Confession* II, 105. For passages in the sources: Mansi, *op. cit.*, XV, 426, can. lxxv, Harduin, *op. cit.* V, 354; Hefele, *op. cit.* IV, 346 *et seqq.*, for confession to the priest; *P. Vinn.*, cans. i-iii, in Wasserschleben 108 *et seq.*; can. xvi-xvii, in Wasserschleben 111; and Watkins, *passim*.

[4] *Vide P. Vinn.*, cans. i-iv, for general clauses; also the canons following; Wasserschleben 108 *et seq.* and canons xxii, xxxii, xxxv-xxxvii. But see, especially, the fine discussion in Watkins, *op. cit.*, *passim*, and other works cited *supra*, ch. ii, sect. 6 and *passim*. See, in particular, Watkins, *op. cit.* 537 *et seqq.*, 654 *et seqq.*, 761 *et seqq.*, for the belief that, in periods of missionary work by Celtic and English workers, "it is probable that the acceptance of such penances . . . . with the confessions almost necessarily involved, would be increasingly urged and insisted on. Yet . . . . a large proportion of persons . . . . would be likely to remain outside the operations of the discipline of the Church;" *ibid.*, 654. Watkins also dates the beginning of recurrent confession as a habit of devout laity, as well as clergy, at about the time of Theodore of Canterbury. *Cf. supra*, ch. ii, sect. 6, on frequency of confession, after Egbert's *Dialogue*.

SECT. 4. IRISH COMMUTATIONS AND THE LIKE

As regards the presence or absence and the extent and nature of these phases of penance in the Irish penitential canons, there was a great deal of variation. As will be demonstrated, it is dangerous to generalise very broadly on this subject, as individual penitentials that sometimes differed widely were probably used in various sections at different times. Hence, the question of commutations will be discussed according to individual penitentials.

In the Penitential of Vinnian,[1] there is no reference to money commutations or redemptions paid to ecclesiastical authorities. References to the payment of compositions mean secular compositions for crimes, or restitution according to secular[2] customs; but there is stern insistence upon obedience to such secular laws, in addition to penance.[3] For perjury, offenders are to free a slave or give equivalent alms; and similar rules apply in general to this penitential.

The *Canones Hibernenses, Title I,* possibly drawn up by a mixed secular and ecclesiastical assembly,[4] permit several compensations by means of slaves or of money, for abor-

[1] Wasserschleben 108 *et seqq.; cf. P. Columb.*

[2] *P. Vinn.*, cans. viii-ix, xxii-xxiii, xxv, xxxv, in Wasserscleben, *loc. cit.*, which we follow for Vinnian.

[3] *P. Vinn.*, can. xxii.

[4] *Vide infra.*

tion[1] and for destroying the mother and child; in some cases in addition to penance,[2] in others standing alone.[3] But it is to be noted that parricide, homicide, magic, heresy, adultery, pollutions from unclean food, illicit familiarity, and capital crimes in general are penalised by penance alone in this set of canons.[4] In these penitential canons, therefore, we find that commutations are not allowed and compensations usually practised only in addition to penance. In this it agrees with the Penitential of Vinnian.

Another portion of the *Canones Hibernenses*, probably of a different date,[5] provides the substitution of psalms or of genuflections, prostrations and cross-vigils,[6] separately or

[1] Can. viii, *cf.* can. ix, in Wasserschleben—"XII ancillae;" *cf.* similar compensation, cans. x-xi.

[2] E. g. penance of "III anni et semis," can. vi; *cf.* can. vii; *cf.* in can. xi, penance of "XII anni, i. p. e. a.;" *cf.* can. viii—"XII ancillae."

[3] *Supra.*

[4] Wasserschleben *loc. cit., et seqq.*, cans. i-vi, xii to end. But *cf.* the addition of "*satisfactione*," in can. i.

[5] *Vide infra*; also *supra*, chap. i, for date of the Latin MS. "Concerning Commutations" or "*De Arreis.*"

A similar but more detailed treatise in old-Irish, with English translation and critical notes, is edited by Kuno Meyer, in *Rév. Celt.* XV, (1894), pp. 485 *et seq.; cf. supra*, chap. i.

[6] For the Latin *De Arreis*, (*On Commutations*), *vide Title II* of the *Canones Hibernenses*, in Wasserschleben 139-140, who allocates them to about the fifth century and connects them with the secular laws. *Cf.* Seebohm, *Tribal Custom* 101 *et seqq.*, which contains explanations of Irish terms in these canons, and adds supplementary matter from other Irish sources. *Cf.* a general provision, of *ca.* A.D. 475 (?), in Watkins, *op cit.* 587. For better explanations of Irish terms used in the Latin *De Arreis* and in the old-Irish treatise *On Commutations*, see the edition of the latter by Kuno Meyer, *loc. cit.*, where a few comparisons of the two treatises are made; *cf.*, also, *supra*, chap. i. There is a great need for more detailed study of the textual relationships of these two treatises and of their connections with Irish secular law, etc.

The heinous sins commuted in canon v of the old-Irish *On Commutations* are penalised by seven years of severe penance in the Latin *De Arreis; vide* Wasserschleben 136. *Cf.* with the "*peccata capitalia*" of the Penitentials, *supra*, chap. ii and with penances similar to those in the Latin treatise *De Arreis* found in other penitentials of the severe group—e. g. those of Theodore, Vinnian, David, etc. See the texts of these latter codes in Wasserschleben, *passim.*

combined, for various periods. The similar old-Irish treatise *On Commutations* would make more available and, naturally, extend the use of such a system of commutations. Its provisions are very interesting and, for the most part, lax, as compared with the severe Penitential of Vinnian. The old-Irish treatise *On Commutations* provides a detailed system of commutations of penances for longer periods in terms of shorter periods of intensified genuflections, prostrations, psalm-singing, vigils, scourging and peculiar penances, sometimes separately and sometimes in combination.

These commutations and penances are grouped as follows in this old-Irish treatise: "Arrea, (Commutations), for Saving A Soul from Hell;" "*Arrea* for Fasting;" "An *Arreum,* (A Commutation), for the Psalms;" "*Arreum Triduani*"—for a three-days' penance; "*Arreum Anni*"—for a year's penance; "*Arreum Quinquaginta Dierum*"—for a penance of fifty days. In contrast, however, to this detailed and lax system of commutations, canon v of this old-Irish treatise has one very severe prescription: that certain sins are undeserving of any remissions of penance, unless God Himself shorten them through death or a message of sickness, or (one redeem them) through the work (penance) which a person lays upon himself; such (sins) as are parricides and manslaughters and man-stealings and brigandage and drunkenness and druidism and soothsayings and adultery and lewdness and lying and heresy and transgression of order. Further it is to be noted that many of the above commutations of the Latin *De Arreis* are much more severe than the

corresponding commutations in the late English penitentials. It is evident, too, that the old-Irish treatise increased the use of commutations as compared with the effect of the Latin *De Arreis* and the Penitential of Vinnian.

Summarising the data from the above individual penitentials, it is evident that commutations to ecclesiastical authorities were missing in the Penitential of Vinnian and in *Title I* of the *Canones Hibernenses,* as well as in *Title III* of the same. Commutations are found, in severe form and for merely a limited type of offence, in the quotation ascribed to St. Patrick which Wasserschleben includes as part of *Title III;* and also in a canon attributed to an Irish synod of *ca.* A. D. 475 (?). The only exceptions to the above are the genuflections, psalm-singing, prayers and peculiar penances in both versions of *De Arreis*[1] (*On Commutations*). Provisions for the performance of penance by substitutes or by delegation are absent, as are commutations by pilgrimages, which are to be performed in addition to penances.

SECT. 5. CONFESSION AND PENANCE AMONG THE WELSH[1]

In its general outlines, Welsh penance closely resembled that of the Irish Church. As regards the practice of private confession, the same general arguments apply as for the Irish: the Penitentials were secret books, used by the clergy alone; but they provided penances for secret sins and sinful thoughts and for sins committed by the laity, thus necessitating confession to the priest by the penitent. There is no trace of public penance in these Welsh penitentials. The penances imposed[2] were especially severe, the singing of

[1] According as the obscure Penitential of Vinnian may have been earlier or later than the above treatises on commutations, the development of commutations in Ireland may have been from severe to lax or in the reverse direction. For supposed dates of the above penitential canons and of the Penitential of Vinnian, *supra,* chap. i.

[2] For practices connected with Welsh penance, as probably associated with Celtic ascetic practices, *vide supra,* sect. 2, under Celtic practices.

psalms as penance being allowed only for sins of thought; no commutations were permitted by the purely ecclesiastical[1] canons; and the payment of secular compositions was in addition to penance.[2] As among the English and Irish, the performance of penance for crimes was enforced by secular[3] laws, as well as by ecclesiastical discipline.

SECT. 6. IN THE BRITISH CHURCH BEFORE THEODORE

The existence of the practice of penance and confession in the British Church before Theodore is attested by several facts. In the first place, it is well known that this Church was extended and controlled largely by Celtic missionaries, especially from Ireland, who would naturally introduce a system like the Irish, with some possible modifications from Welsh usage.[4] Confession of laity to monks is mentioned

See, in particular, Gougaud, *Les chrétientés celtiques,* chap. iii, sect. 12; Lloyd, J. E., *History of Wales,* (2 vols., London, 1911, 2d. ed., 1912), *passim*; Willis-Bund, J. W., *The Celtic Church of Wales,* (London, 1897), *passim;* Newell, E. J., *History of the Welsh Church, passim.* There is excellent material on Welsh ascetic practices in the last three works, particularly as connected with monasteries in early Wales. Valuable legendary material is also to be found in Rees, *Lives of the Cambro-British Saints, passim,* as bearing on penances performed and prescribed by Welsh saints, etc.

For general penances on secret sins and sinful thoughts, applying to both clergy and laity: *P. Dav.,* cans. iii-vi, viii-ix, xiii-xiv and xvi. *Cf. Syn. Br.,* cans. i *et seqq.,* in Wasserschleben 103; *Syn. Vict.,* cans. i *et seqq.,* especially can. ix, in Wasserschleben 104.

[1] For secular laws requiring or enforcing penance: *Ancient Laws of Wales,* (Record Comm., 1 vol., fol., London, 1841), especially *Canones Wallici* or *Legg. Wall.,* xliv *et seqq.,* on p. 843; similar secular provisions in Wasserschleben 124 *et seqq.,* cans. xli, xlvi, lxv; and *Cod. Bigot.,* cans. lix *et seqq.,* in Wasserschleben 131-132 and 135-136. Can. xlvi definitely mentions voluntary confession to a priest.

[2] On the secular origin of the *Canones Wallici, supra,* chap. i.

[3] For the payment of composition in addition to penance, *vide P. Dav.,* can. vi, on fornication, (Wasserschleben 101).

[4] Especially near the Welsh border. On the Celtic missionaries and practices, *vide* Watkins, *op. cit.* 537 *et seqq.,* 688 *et seqq.,* 620 *et seqq.,* 755 *et seqq.* and *passim.*

several times in the *Life of S. Columba,* by Adamnan;[1] in the *Collectio Hibernensis,*[2] which was probably used by Celtic missionaries in England; and in connection with the labours of St. Cuthbert,[3] as well as in many later sources.[4] Penance may well have been administered from the Irish penitentials and penitential canons previously mentioned or, in some sections near the Welsh border, from Welsh penitential canons. The chief penitential code used may have been the *Libellus Scottorum* mentioned in the preface to the Penitential of Theodore.[5]

Concerning the existence of public penance in the British Church before Theodore, the general denial has already been mentioned.[6] The chief evidence for this denial is the familiar remark in the Penitential of Theodore, Book i, canon xiii, section[7] 4: "Reconciliation has not been established publicly in this province, because penance is not public." This view has been questioned by Pijper[1] and Kliefoth,[2] who consider that public penance was practised in Great Britain both before and after Theodore. But the evidence adduced by Pijper refers to Theodore and the period after him; while the more significant passages cited by Kliefoth and by Watkins have been shown to refer to isolated, untypical cases[3] only. Hence, it would seem that the arguments are still valid against the existence of public penance in England before the time of Thodore. As we shall see, however, important reasons make it necessary to separate the history of this institution into these two periods.

[1] Edition of Reeves, pp. xliii, lxxvi, I, 30, cited by Hanna, article "Penance," in *Cath. Ency.*

[2] *Coll. Hibern., Lib.* xlvii, ed. Wasserschleben, (Giessen, 1874, 2d. ed., Leipzig, 1885).

[3] *Vide* Bright, *Early English Church* 240; *cf.* 239, after Bede; text in Watkins, *op. cit.* 632.

[4] *Vide* Bridgett, *Holy Eucharist* I, 227 *et seqq.; cf.* the references given *supra,* chap. ii, sections on the directing of penance and development of private penance.

[5] On the identity of this code, *infra,* chap. iv; *cf.* Watkins, *Hist. of Penance* 651.

[6] Lea, *Auricular Confession* II, 74; Rauschen, *Buszsakrament* 191; Hergenröther, *KG.* I, 702; Wasserschleben 16, 30 *et seqq.,* 197; Funk, in *KLex.,* II, 1575; Schmitz and H. and S., *passim*; Liebermann, *Gesetze der Angelsachsen* II, 618; Ludwig, in *AKKR.,* vol. 83 *N.F.,* (1903), p. 223. Liebermann, *loc. cit.,* remarks that the North, which introduced the custom and the word for penance from the Anglo-Saxons, knew only private penance. *Vide supra,* ch. ii, sects. 1-3.

[7] In some versions can. viii, sect. 4; *vide* Wasserschleben, 30, 197; *cf.* Schmitz I, 535 and H. and S. III, 187. In those versions which contain only the second book, this chapter appears as c. xv of that book; *vide* H. and S., *loc. cit.,* n. 59. *Cf.* text in Watkins, *op. cit.,* 634.

SECT. 7. PENANCE AND CONFESSION DURING THE TIME OF THEODORE

Several passages in the Penitential of Theodore may possibly mean that he introduced parts of public penance. Book i, canon xiii, in addition to the previous citation on reconciliation, mentions the custom of the Romans' reconciling within the apse, reconciliation being by the bishop and after penance has been finished.[4] A description of the ceremonies of imposition and of reconciliation by the bishop is entirely lacking, as well as an "*ordo*" at the beginning of the Penitential. In view of the fact that these

[1] Pijper, *Bæte en Biecht* II, 42-44, after *P. Th.,* Alcuin, *Laws of Ethelred,* the Synod of Clovesho and *P. Egb.*

[2] Kliefoth, *Liturgische Abhandlungen,* 2 vols., (1854), as cited *supra,* sect. 2.

For Theodore's position on this, *vide,* also, Watkins *op. cit.,* 634 *et seqq.,* 650.

[3] *Vide supra,* for references; also Watkins, *op. cit.* 634-635 and 647 *et seqq.*

[4] Wasserschleben 197 and references in Schmitz and H. and S., cited *supra.*

But the priest may reconcile in necessity: *P. Th., lib.* i, can, xiii, sect. 3; *cf. Watkins, locc. citt.*

ceremonies were, apparently, unknown to the earlier Celtic Church in England, just being reorganised by Theodore, it would seem absolutely necessary for him to describe them somewhat fully, if he were introducing them; but he does not even touch upon them.[1]

In canon xi, section [2] 5, there is a possible reference to the penance of exclusion from the church-building for heretics; and in canon ix, section 5, a plainer [3] penance for notorious adultery by the clergy; while canon iv, section [4] 6 apparently provides this penance for involuntary homicide. The plainest reference is in sections of canon v, directed against heretics, for whom it prescribes four years outside of the church, six years among the "*auditores*" and two more without communion; [5] or, in another place, three years

[1] Of course they may have been described in the pontificals or service-books used by bishops in the time of Theodore, as the bishops conducted such ceremonies; *vide supra*, chap. ii, under public penance. Such ceremonies, at least in part, are described in later pontificals that were used in England from Egbert of York forward. *Vide* Bridgett, *Holy Eucharist* I, 227 and *infra*, sect. 8, for the *Pontifical* of Egbert; also *infra*, for other pontificals.

[2] Wasserschleben 196; Schmitz II, 553; H. and S. III, 186. The passage in sect. 2 is "exterminabitur ab ecclesia" for heretics.

[3] Wasserschleben 194, agreeing with Schmitz II, 552 and H. and S. III, 185: "projiciatur extra ecclesiam et poeniteat inter laicos quamdiu vixerit." The word "*ecclesia*" or "church" is variously interpreted in such passages to mean "congregation" or "church-building" or the spiritual body or as referring to full rights of membership; *vide supra*, chap. ii, on controversy over public penance, and *infra*, chap. v on use of "*ecclesia*" in excommunication *formulae* later in England.

[4] Wasserschleben 188, agreeing with H. and S. III, 180. Schmitz II, 548 has, instead, forty days' fast.

[5] Wasserschleben 189-190, sects. 10, 14, practically agreeing with Schmitz II, 549 and 550, and with H. and S. III, 181-182. The penances mentioned certainly mark off three stages of penance prescribed before heretics may be admitted to full rights of Christian fellowship; and these stages certainly resemble, in general, three of the "penitential classes or stations" prescribed in the East, from which Theodore came. From the fact implied in the penance as mentioned in the text above, i. e. that heretics were evidently denied communion for the whole period of twelve years, it would seem that the phrases "*exterminabitur ab ecclesia*" and "*projiciatur extra ecclesiam*" meant a penance distinct from, and severer than deprivation of communion and ordinary penances.

outside the church, seven years in the church among the penitents and two years more without communion.

Summarising the above references in the Penitential of Theodore, we conclude that the general denials, by most modern writers, of the existence of any part of public penance in England in Theodore's time have been too broad. There was some penance resembling that in three of the penitential classes or stations that were a part of public penance in its completest form; though such penances are usually referred to in very general, indefinite terms and are limited in this penitential to a narrower range of capital offences [1] than was customary on the Continent. On the other hand, a description of the ceremonies of public penance is lacking and these may not have been used in full in the England of Theodore's time.

On the whole, then, it seems that penance at that time was mainly private; though one finds some penitential practices mentioned that might attract public attention and humiliation, such as the relinquishment of weapons [2] and the assuming of a monastic [3] life. The secular laws,[4] too,

[1] If Theodore or the compiler of his "*judicia*" intended to prescribe or to secure the extensive practice of public penances for capital offences, it is incredible that they would have limited it to the few offences mentioned. Especially significant is the omission of the prescription of public penance for offences penalised by its elsewhere: e. g. incest, murder of priests, backsliding of penitents, fornication and others; *vide supra*, chap. ii, for Continental practices and *infra*, this chapter, on the *Dialogus Egberti*.

[2] *P. Th.*, can. iv, sect. 5 and *cf.* sect. 4; Wasserschleben 188; Watkins, *op. cit.* 634; H. and S. III, 180.

[3] *P. Th.*, can. iii, sect. 1; Wasserschleben 187.

[4] *Vide* Liebermann, *Gesetze* II, 618 and *infra*, chap. v.

prescribe penance for many offences, but the imposing and directing of such penance were left to the clergy.[1] Confession might be to God alone, in case of necessity,[2] but was regularly prescribed to a priest [3] or to a bishop.[4] Such jurisdiction is shown, according to Liebermann,[5] by the very early use of Anglo-Saxon terms for "confession," "the confessor," "the confession district," "to confess;" and for "penance," "to do penance" and the like. The Penitential of Theodore [6] also prescribes numerous penances for laymen, thus showing the extent of such jurisdiction.

SECT. 8. CONFESSION AND PENANCE AFTER THEODORE

Whether or not public penance was practised during the time of Theodore or before him, evidence of at least some of its traits or parts is found in the period after Theodore. Though some of the penitentials of the Theodore-cycle [7] and the Penitential of Bede [8] are silent or inconclusive concerning public penance, some of the works generally ascribed to Archbishop Egbert of York (ca. A. D. 732-766)

[1] Liebermann, *Gesetze*, etc. II, 618 and *s. v.* "*Beichte*", "*Busse*", "*Priester*", "*Bischof*", etc. See, also, Hanna and Thurston, *locc. citt.*; and *infra*, chap. v.

[2] *P. Th.*, can. xii, sect. 7, in Wasserschleben 196; Schmitz II, 554; H. and S. III, 187; Watkins, *op. cit.*, 635, *cf.* 653.

[3] Liebermann, *loc cit.*; *P. Th.*, lib. ii, can. ii. *Vide* Wasserschleben 204; Schmitz II, 568; H. and S. III, 191-192. *Cf.* the cited works of Bright, Hunt, Bridgett, *passim*.

[4] *Vide P. Th., loc. cit.*, etc.; Watkins, *op. cit.*, 653.

[5] *Vide supra*.

[6] See references in Theodore, *supra*.

[7] *Cap. Dach.* is silent but for can. xxxiv, (Wasserschleben 148). *Can. Greg.*, cans. xlviii and li, follow Theodore; Wasserschleben 166-167. Silent are: *P. Mart., Conf. Ps. Egb., Can. Ps. Edg., Can. Aelfr., Aelfr. Pastoral Epistle;* see the editions in Wasserschleben and in Thorpe, *Ancient Laws*, etc., *passim* and discussion of authorship *infra*, chap. iv.

[8] See the edition of *P. Bede* in Wasserschleben.

contain several plain references; as does, also, the later Penitential of pseudo-Egbert.[1]

The most significant passages are found in the *Dialogue* [2] of Egbert and in his Pontifical. Among other qualifications for the priesthood mentioned in the *Dialogue,* as an answer to "Interrogation XV," is one that the candidate shall not have performed public penance. This is followed by an especially plain case—a passage which provides that idolators, magicians, thieves, perpetrators of homicide, perjurors and fornicators ought not to be admitted to communion nor to receiving the honor of former dignity unless through public penance.[3] The significance of this passage becomes still stronger when compared with others.

In the *Pontifical* [4] of Egbert—a service-book for the use

[1] For more ambiguous evidence from Alcuin, Theodore, the *Laws of Ethelred*, the Synod of Clovesho and others, Pijper, *Boete en Biecht* II, 42-44. For Frankish works, *infra*, this chapter.

[2] Both generally ascribed to Egbert; *vide* Cabrol et Leclercq, *Dictionnaire*, etc., (1921), under "*Egbert*;" H. and S., III, 403; and the articles on Egbert in the various encyclopedias of theology, etc. The apparent conflict between the *Dialogue* of Egbert and the so-called *Excerptiones Egberti*, noted by some, vanishes since the latter has been proven to be Frankish; *cf.* Hörmann, in Fitting's *Mélanges*, (Montpellier, 1908), *passim*.

For the text of the *Dialogue*: H. and S. III, 403, followed by us; *cf.* Thorpe, *op. cit., passim*.

[3] The first passage reads: "Si poenitentiam publicam non gessit;" while, below, follows the offences to be punished by public penance: "Eos tamen nisi per poenitentiam publicam non oportet admitti ad promerendam communionis gratiam non ad recuperandum pristinae dignitatis honorem; alienum est enim ab ecclesia poenitentes sacrosancta ministrare, qui dudum vasa fuerant vitiorum." *Vide* H. and S. III, 410.

Note that Watkins, *op. cit.* 636-637, cites a passage from the *Dialogue* regarding recurrent confession, but omits the passage concerning public penance and materials from the *Pontifical*.

[4] For the text of the *Pontifical*: Greenwell's edition, in *Surtees' Soc. Pub.*, (Durham, London, 1854), with critical notes. *Cf.* H. and S., III, 415; fragments in Martène, *De ritibus ecclesiae* II, 214 and in Maskell, *Monumenta ritualia ecclesiae Anglicanae* II, 77, (Oxford, 1882); and scholarly comparisons with other pontificals in the editions of others by Wilson, Maskell, *et al.*, mentioned *infra*.

of bishops that was probably used by Egbert at York [1]—occurs a description of the ceremonies for public penitents, apparently modelled after Roman [2] usage. Passages from the penitential psalms used at imposition [3] ceremonies are given, together with prayers for the reconciliation [4] of penitents, a prayer [5] over the penitents, a description of the ceremony of raising them from the pavement, further penitential psalms, in antiphonal [6] chant, and absolution. From

[1] *Supra,* for references on authorship.

[2] The services in Egbert's *Pontifical* are preceded, (Greenwell ed., p. 120), by "FERIA V. IN COENA DOMINI HORA VIta. CELEBRATUR MISSA AD LATERANIS SIC INCIPIENS," followed by mass. Egbert may have brought this service back with him from his trip to Rome. For this trip, *vide* Cabrol et Leclercq, *Dictionaire,* under "*Egbert.*" On its resemblance to the Gelasian and other forms, see the various editions of the pontificals, *infra.*

[3] "ORATIONES ET PRECES SUPER PENITENTEM CONFITENTEM PECCATA SUA MORE SOLITO FERIA IIII. INFRA QUINQUAGESIMAM." "Exaudi Domine, preces nostras, et tibi confitentium parce peccatis," etc. "Per." Then "Alia. Preveniat hunc famulum tuum, quaesumus Domine, misericordia tua," etc. "Alia. Adesto Domine, supplicationibus nostris," etc. "Alia. Domine Deus noster, qui offensione nostra non vinceris . . . . Concede ergo, Domine, ut tibi poenitentiae excubias celebretur," etc. "Per."

[4] "Oratio ad reconciliandum penitentem. Feria V. in cena Domini." "Adesto, Domine, supplicationibus nostris, et me, qui etiam misericordia tua primus indigeo, clementer exaudi," etc. Then: "Alia. Presta, quaesumus Domine, huic famulo tuo dignum poententiae fructum, ut Ecclesiae tuae sanctae, a cujus integritate deviaverit peccando, admissorum reddatur innoxius veniam consequendo. Per." etc.

[5] "Oratio super penitentem," by the bishop, in all probability: "Da nobis, Domine, ut sicut puplicani," etc.

[6] "Hic levas eos de pavimento his verbis dicendo, canaturque antifona. Ant. Vivo, ergo, dicit Dominus," etc. "Psalmus. Miserere mei Domini.

Absolvimus vos vice beati Petri apostolorum principis. . . . Per eum, qui cum eo vivit. Amen." "Domine sancte, Pater Omnipotens, aeterne Deus, qui per Jesum Christum Filium tuum Dominum nostrum, vulnera nostra curare dignatus es . . . . remittasque omnia crimina et peccata universa condones . . . . et de tua misericordia confidens, ad bona pacis premii tui, atque ad coelestia pervenire mereatur, et ad vitam aeternam. Amen."

the extracts in our notes and the full text in Greenwell's edition, one perceives that the ceremonies and date of public penance under Egbert closely resembled those previously described [1] as practised on the Continent.

From the above passages in the works of Egbert of York it is clear that public penance was prescribed and put into practice by him and, possibly, practised outside of his archdiocese as well. It is apparent that it applied to the sins of paganism, magic, false witness, homicide, fornication and perjury.[2] There is also a possible reference to penitential classes or grades in Egbert's *Dialogue,* though the passage may, more probably, refer to the degrees of penance for each ecclesiastical degree of rank.[3] The scant attention paid to public penance in the Penitential of Egbert may have occurred because it was already dealt with in detail in the *Dialogue* and the *Pontifical.* At any rate, the traditional, general denials that public penance existed in Egbert's day seem to be much weakened [4] by the above evidence and apparently need decided modification.

Somewhat full descriptions of the ceremonies over public

[1] *Cf. supra,* chap. ii, under public penance.

[2] "*Interrog. XV*: "Pro his vero criminibus nullum licet ordinari, sed promotos quosque dicimus deponendos: idola scilicet adorantes; per aruspices (et divinos atque) incantatores captivos se diabolo tradentes; fidem suam falso testimonio expugnantes; homicidiis vel fornicationibus contaminatos; furta perpetrantes; sacrum veritatis nomen perjurii temeritate violantes," etc. *Vide* H. and S., III, 410; *cf.* Thorpe, *op. cit.* 323. *Cf. Interrog. XIV,* with its significant "ab ecclesia limine per vim volumus abstrahi," etc. and *Interrog. X,* in H. and S., III, 407-408.

[3] "*Interrog. XII*", concerning the slaying of a cleric by a layman: "Agat poenitentiam secundum gradus poenitentiae constitutos," etc.

[4] Watkins, *Hist. of Penance, passim,* omits the above passages on public penance. The so-called "*Prologue*" or "*Ordo*" to Pseudo-Bede II has references pointing to public penance. But this penitential is Frankish; see the textual criticism *infra,* chap. iv.

penitents are found in similar passages in the Pseudo-Egbert, Book i, canon xii [1] and in the *Modus Imponendi Poenitentiam,*[2] canon i. These passages, translated into Anglo-Saxon,[3] merely claim to be descriptions of customs "across the sea;" they are probably of Frankish origin and, in some of their details, represent attempts to innovate. Because of the close connection between the Penitential of pseudo-Egbert and the similar collection by Halitgar in the Frankish Church of the ninth century, these passages may have been intended to revive or further emphasize the practice of public penance in England during the reform movement of the late ninth and early tenth centuries.[4]

Pontificals [5] later than that of Egbert, of which some, at

[1] In Wasserschleben 321-322, after *P. Halitg.* lib. iii, can. xiii; *cf.* Thorpe, *op. cit.*, 365: "Hae consuetudines trans mare apud populum Christianum observantur, id est, quod quilibet episcopus sit in sede episcopali sua die Mercurii, quem caput jejunii vocamus, ante quadragesimam, tunc unusquisque eorum hominum, qui capitalibus criminibus polluti sunt, in provincia ista eo die ad illum accedere debet, et peccata sua illi confiteri; et ille tum praescribit eis peccatorum eorum emendationem, cuique pro ratione delicti sui, et ita postea cum illius venia domum redeunt. Et iterum die Iovis ante pascha ad eundem locum omnes congregabitur, et episcopus super eos cantat, et (eis) remissionem dat, et ita domum redeunt cum episcopi benedictione. Hoc ita observandum est omni populo Christiano; et nihilominus sacerdoti diligenter perscrutandum est, quanam perfectione poenitens emendaverit id, quod ei praescriptum erat; et ita ei juxta illud remissionem det."

[2] Thorpe, p. 405, with further details in cans. ii, *et seq.*—reconciliation by the bishop. No mention in this or above of penitential classes These are all omitted by Watkins.

[3] *Vide supra.*

[4] *Vide supra,* chap. ii, on public penance in the Frankish Church and *infra* chap. iv, for textual criticism of *P. Ps. Egb.*

[5] For lists of pontificals of English and Scotch use: Henderson, in *Surtees Soc. Publications* LXI, (1873), especially pp. ix *et seqq.;* Greenwell's edition of the Pontifical of Egbert, "Preface," (incomplete); and the excellent brief bibliographies in Cabrol et Leclercq, *Dictionnaire, s. v. "Egbert."*

least, were probably used in England in the pre-Norman period, also include references to or descriptions of the ceremonies of public imposition of penance and public reconciliation. The Canterbury Benedictional,[1] of a date probably in the second quarter of the eleventh century, has full ceremonies for imposing public penance and for public reconciliation; and specifically introduces these ceremonies with the title "Order for Those Performing Public Penance." In the obscure Benedictional of Archbishop Robert,[2] which may be of either English or French use of the eleventh century or later, is found an "Absolution given to Penitents by the Archbishop," apparently describing the ceremonies of public reconciliation. Another pontifical which was more probably used in England and is now preserved at Magdalen College,[3] also contains full services for public imposition and public reconciliation. All of these later pontificals present many points of substantial similarity

[1] This and the following benedictional are really pontificals, as they contain the usual serices found in such books.

The admirable edition of the *Canterbury Benedictional* by R. M. Woolley for the *Henry Bradshaw Society,* (1917), has detailed comparisons with other pontificals and critical notes which we follow. The *ordines* concerned are: "*Ordo agentibus publican poenitentiam*", (pp. 13-14), and a ceremony for public reconciliation, (pp. 29-35, 143-144, 150).

[2] For the *Benedictional of Archbishop Robert,* see the excellent bibliography of editions in Cabrol et Leclercq, *Dictionnaire, loc. cit.*; and Cabrol, *L'angleterre chrétienne* 305-306. In the edition published by Gage, in *Archeologia* XXXIV, is found "*Sermo Diaconi pro reconciliatione poenitentium,*" in a later hand; *vide op. cit.* 122. *Cap.* lxx, *op. cit.* 126, has an "*Absolutio poenitentis a presule danda.*"

[3] For the *Pontifical of Magdalen College,* the edition by H. A. Wilson, for the *Henry Bradshaw Society,* (1910), has an excellent text and detailed comparisons of various pontificals. See, especially, the preface. The ceremonies in question are on pp. 155-156, (cf. pp. 284-286): "*Ordo ad dandam poenitentiam*", and "*Reconciliatio poenitentium in Cena Domini.*"

in the ceremonies for public penance to those in the Pontifical of Egbert.

Let us now summarise the conclusions to be drawn from the above sources on Anglo-Saxon penance. From the evidence extant, it would seem that Theodore introduced a few of the penitential stations for a very limited number of special offences of a heinous character. Moreover, that the assignment and ceremonies of public penance were further practised from the time of Egbert, Archbishop of York (A.D. 732-766), to the eve of the Norman Conquest, probably without more than a fragment of the penitential stations,[1] if that. In the absence of detailed descriptions or full references to penitential stations or classes, it is also probable that public penance then consisted chiefly, if not wholly, in the annual ceremonies celebrated by the bishop. Furthermore, the absence[2] of detail in some sources and the utter silence of several penitentials on them cannot be explained, in the case of the early documents, by claiming that such practices were so well-known then as not to require description and specification for the sins concerned. For, as mentioned[3] above, the absence of public penance before Theodore would necessitate full description of the new customs.

As regards other[4] public acts of penance by the penitent, the chief act of this nature[5] was the relinquishment of arms,

[1] The class of *audientes* is specially mentioned in a few cases, but for isolated offences. Exclusion from the church-building—which may correspond to the penance of the "*flentes*"—is prescribed in very rare cases and dismissal from part of the church-services is not mentioned. *Vide supra,* this section, *passim.*

[2] *Vide supra.*

[3] *Vide supra,* this and the preceding section.

[4] I. e. besides the ceremonies, etc., of public penance in the church.

[5] For others practiced among the Celts and on the Continent, *supra,* chap. ii, and chap. iii, the section preceding this.

a penance which was probably very humiliating in an age when the bearing of arms was the universal mark of a freeman.[1] In the absence of data we are unable to conclude whether or not the Anglo-Saxons had a special place in the church-building reserved for penitents, such as may have existed on the Continent.[2]

Was public penance required among the English for notorious sins of a specially heinous character, or was it prescribed for all mortal sins, whether notorious or secret? In support of a theory that public penance was required for secret mortal sins, the sources for pre-Norman England offer no definite information. The question is indeterminate for England, unless one assumes that English practice followed a rule then quite generally practised on the Continent —that all secret sins should be expiated by private penance. Some ceremonies of public penance for publicly known, heinous offences[3] were practised, however, from the time of Egbert of York (A. D. 732-766). Many of these notorious offences were among those usually dealt with in the courts. Hence they would naturally offer excellent opportunities for the cooperation of ecclesiastical discipline. The

[1] Penitential provisions of this nature probably aided in the later movement for the "Peace of God" or "Truce of God", *q.v.* in the encyclopedias of theology, etc. This connection of the Penitentials with the peace movement is very important, has been somewhat neglected, and may furnish the present writer with a topic for later publication.

[2] *Vide supra,* chap. ii. For the administration of public penance by St. Aelfheah or Aelpheage, (*ca.* 974), *vide* Du Cange, *s. v.* "*Absolutio,*" *Reconciliatio.*" Public penance as performed by King Edgar, (A. D. 959-1075) is mentioned by Lea and Lepicier *opp. citt., passim,* but is disputed by Hodgkin, *Hist. of England . . . . to the Norman Conquest,* pp. 358-359.

[3] E. g., idolatry, magic, homicide, perjury, fornication, theft are mentioned in Egbert's *Dialogue, ut supra. Cf.* a list by Caesarius of Arles (early sixth century), mentioned by Watkins, *op. cit.* 554, with exceptions. See, also, *supra,* chap. ii.

performance of public penance and of other penitential acts of a public nature might, with excommunication, constitute some of the chief means for such ecclesiastical cooperation.

Another well-known ecclesiastical punishment for heinous offences was excommunication.[1] In the English[2] laws, criminals penalised by excommunication include perjurors who undertake penance; those who live in concubinage; those guilty of sodomy; magicians; devastatators of church-land; robbers of church-property; thieves; those who strike down a cleric; those guilty of high-treason; those who sell slaves into a pagan land; fugitives from justice; those guilty of contempt of an ecclesiastical court; renegade monks and priests; and those who marry a monk or nun. Besides its strictly ecclesiastical features, excommunication was accompanied by other severe disabilities. From the secular sources and the *formulae* for excommunication used in pre-Norman England, it would appear that excommunication was used for many grievous crimes against secular law, in fact that grievous criminals and the excommunicated seemed almost synonymous.

[1] For ecclesiastical materials on excommunication: Sägmüller, *KR.*, I, 82-83, 201, 318, 337, 361; II, 28, 34, 59, 64, 71 *et seqq.*, 133, 320, 325, 337, 348, 355 *et seqq.* and his excellent bibliographies; Schmitz II, 71, 73, 245, 491, 430.

For England see, especially Liebermann, *op. cit.* II, *s. v.* "*Exkommunikation, Exkommunizirt,*" etc.; also the texts of the *formulae* of excommunication in Liebermann, *op. cit.* I, *passim*. The account in Makower, *op cit.*, is inadequate and indefinite. Purely ecclesiastical uses of excommunication are irrelevant to the purposes of this work and are omitted.

[2] *Vide II Ath.* 26 and *I Edm.* 6; *Wih.* 3-4, 1; *Synod of 1102; I Edm.* 6, *Exkomm. V*, 2, *VIII*, 2 and *XII*, 1; *Exkomm.* I, 2; *Exkomm. IV*, etc.; *Exkomm. I*, 11, 1, *V*, 2, 3 and VIII, 2; *II Cn.* 39; Liebermann, *op. cit.* II, *s. v.* "*Diebe*" and "*Hochverrat;*" *VIII Ethr.* 5; *Alf.* 1, 7; *Exkomm. I*, 11; *VIII Ethr.* 41; *Cn.* 1020, 17. The preceding references are to Liebermann, *op. cit.* I.

For social and other disabilities of the excommunicated, *vide infra*, chap. v.

In pre-Norman England, as elsewhere, the bishop[1] had jurisdiction over the imposing of penance for notorious offences. Indeed, he is definitely mentioned in that capacity in some of the Anglo-Saxon Laws.[2] In some cases, it is true, the priest is mentioned as apparently imposing penance; but, naturally, such references would be restricted to offences not included among the notorious offences that were under the bishop's power.

The forms of penance were essentially like those found in the Penitentials in general.[3] For extreme cases there might be deprivation of arms or of consecrated burial, exclusion from all rites of the Church and dedication to a monastic[4] life. Penances might be prescribed singly or in varying combinations according to circumstances, somewhat as in other penitentials; and were differentiated for the laity and for the different ranks of the clergy.[5]

Penance was considered medicinal as well as punitive,

[1] *Vide* Liebermann, *op. cit.* II, *s. v.* "*Bischof*" and under individual offences; also under "*Geistliches Gericht.*" For the part of the bishop in the courts, *infra*, chap. v.

[2] A general provision is found in *EGu., Prol.*, 2: "Tha woruldbote hig gesetton . . . . swa hwar man wolde godcunde bote gebugan mid rihte to bisceopa dihte"; *vide* Liebermann, *op. cit.* II, 618 and I, 129. On incest, the late *NPL.*, 61, 2, in Liebermann, *op. cit.* I, 384: "Do penance as the bishop prescribes"—"Bete swa biscop getaece." On treason to a lord—*Alf.* 1, 2: ". . . . suffer as the bishop prescribes"; but *cf. Alf.* 1, 8—"as the confessor," (Liebermann, *op. cit.* I, 489).

[3] For the powers of the priest, *vide* Liebermann, *op. cit.* II, *s. v.* "*Priester, Geistliche,*" etc.

For the forms of penance, *supra*, chap. ii.

[4] *Vide* Liebermann, *op. cit.* II, 618, nos. 6-6a, 8 and s. v. "*Exkommunikation,*" no. 14. *Cf. ibid.* II, 618, no. 2, 1 and I, 184-185, for a reference in *I Edm.* 1, 1, concerning unchastity by a cleric. *Cf. supra*, chap. ii, for general discussion; also under individual crimes in Liebermann, *op. cit.* II.

[5] *Vide supra*, chap. ii, for penitential references.

a fact shown by the frequent addition of the words "inwardly," "zealously" and the like.[1] The words do not refer to secular expiation and therefore show that penance was intended to improve the evil-doer morally. Accordingly, penance rises with the gravity of the deed and not alone, like secular compositions, from revenge or with the rank of the injured.[2]

SECT. 9. COMMUTATIONS IN THE ENGLISH PENITENTIALS

The same general principles for the commutation or alleviation of penance that we have found in other penitential canons, appeared in the English penitentials[3] also. But, in the application of these principles and in the forms of commutation and redemption, there was considerable difference.

In the Penitential of Theodore, general commutations[4] are lacking; though canon xii provides for admission to communion before penance is completed, i.e. in a year or

[1] Liebermann, *op. cit.* II, 618, nos. 6-6a.

[2] Liebermann, *op. cit.* II, 618: "God does not seek temporal (space) of penance, but the manner." *Cf. ibid.*, nos. 6, 6a-7, and Liebermann, *op. cit.* I, 591.

On fasts, in addition to the above references, *cf. I. Cn.* 16, 1—that only penitents fast also between Easter and Pentecost, in Liebermann, *op. cit.* I, 297.

[3] The basic principles for commutation are best seen in *P. Egb., Prol.*, (Wasserschleben 231-232, Schmitz II, 662-663, H. and S. III, 417), where penance is to be according to condition (rich or poor), or according as one is free or slave; or according to age, knowledge, rank (if a cleric); whether married or unmarried; the quality of the sins and the doers; their habit, motive and the like. *Cf. P. Egb.*, can. v, sect. 21, in Schmitz II, 666; also the list of penances in *P. Egb., Prol., loc. cit.*, after the Benedictine Rule.

[4] Commutations and redemptions in the sense of money paid to ecclesiastical authority for such purposes.

Psalms are prescribed for minor sins of neglect of ecclesiastical service; *vide P. Th., passim.*

six months.[1] It is true that the same penitential allows composition paid to secular authority to count as a means of alleviating penance; for canon iii, sect. 3, concerning theft, allows a shortening of penance for having paid composition or made restitution.[2] Moreover, in canon iv, sect. 1, concerning homicide for revenge, penance may be cut in two by paying secular compensation to the kindred.[3]

As regards the above citations, however, it will be seen that they apply to special, isolated sins; that the additional penance to be performed in case composition has not been paid may justly be regarded as a punishment for failing to satisfy or yield to the secular law; and that thus the Penitentials served as powerful means for reinforcing the somewhat weak secular authority.[4] More important, because more general, is the provision in canon vii, sect. 5, that twelve "*triduana*" be measured for a year.[5] This passage is apparently borrowed from an Irish source; is merely praised by Theodore, not prescribed; and the following passage in Theodore definitely states that, in borrowing from the "*libellus Scottorum*," Theodore sometimes increased, sometimes alleviated its penances.

In the Penitential of Egbert[6] there appear very import-

[1] Wasserschleben 196; *cf. Cap. Dach.*, xxvi, *Can. Greg.*, cxxiii, *P. Mart.*, ix and *Ps. Cumm.*, xiv, 6.

[2] Wasserschleben 187, agreeing with other editions. *Cf. Can. Greg.*, xciv; *P. Egb.*, x, 5; *Ps. Cumm.*, iv, v.

[3] Wasserschleben, *loc. cit. Cf. Cap. Dach.*, clvi; *P. Mart.*, li, 7. For details, *infra*, chap. vi.

[4] *Cf. infra*, chap. v.

[5] Wasserschleben 191 and *cf. infra*, chap. iv.

[6] Ecclesiastical laws passed by mixed synods and found in the secular collections also allow for alleviations. *Vide VI Ethr.*, 52-53; *II Cn.*, 68, 1, 10; *VI Ethr.*, 10, 2, according to intent, age, sickness, weakness and the like; *cf.* Liebermann II, 618, *s. v.* "*Pönitenz*," nr. 4, and Liebermann I, 259. On the use of money for commutations, *infra*; also ch. v.

ant provisions for commutation by money redemptions, alms, genuflections, scourging, the singing of psalms, and the like.[1] But these are intended for those who cannot perform penance in the rigid fashion prescribed elsewhere in that penitential.[2] Moreover, in estimating the severity of these money redemptions, one must bear in mind the far greater purchasing value of money in that day. According to an estimate by Hodgkin,[3] the purchasing value of money then was fully twelve times that in 1905.

But the Penitential of Egbert provides that "those who do not know psalms and cannot fast, give, for one year (penance) on bread and water, XXVI shillings (Latin *solidi*) in alms, besides fasting one day in each and every week up to nones and another up to vespers and in the three quarantines;[4] but that penance is less severe in the second year. The following section[5] also makes the same

[1] *Vide* Schmitz II, 671, can. xiii, sect. 11; *cf.* Wasserschleben 247-248, 244-246 and notes; H. and S. III, 429-430. The following can. xvi—"*Dictis S. Bonifacii*," (in Wasserschleben 246, Schmitz II, 672), on how seven years may be expiated in one, is regarded by the editors as a spurious interpolation.

[2] Can. xiii, sect. 11, in *locc. citt, supra*; "Item qui autem quod in penitentiale scriptum est inpleter potuerit, bonum est, qui autem non potest, consilium, damus misericordiae Dei," etc. *Cf.* can. vii, sect. 4, for breaking fast, in Schmitz II, 667; also *cf.* can. x, sect. 3 *et seq.*—composition for theft—in Schmitz II, 669.

[3] *Vide* Hodgkin, *Political History of England*, etc., I, 232-235, after Chadwick, *Anglo-Saxon Institutions*. *Cf.* Liebermann, *op. cit.* II, *s. v.* "*Geldrechnung*," etc.

[4] Wasserschleben 245; H. and S. III, 429: "Qui vero psalmos non novit et jejunare non potest, pro uno anno in pane et aqua donat in elimosinam solidos XXVI. et in unaquaque hebdomada uno die jejunet usque ad nonam et alium usque ad vesperum et III quadragesimis, quantum sumit, penset ea tribuet in elymosinam. In secundo anno remissior penitentia est"; omitted in Schmitz II, 667 but on p. 671.

[5] Wasserschleben 245; H. and S. III, 430; Schmitz II, 671, sect. 1: ". . . . in secundo anno XX solid., pro tertio anno XVIII solid., id

provision for the first year and adds the succeeding prescriptions for those who cannot perform penance: ". . . . in the second year, XX *solidi*, for the third year, XVIII", a total of sixty-four *solidi* or shillings for the first three years.

Even if the rate were considerably reduced for the remaining time for homicide, for example, the total penance would be somewhat severe,[1] when one considers that it was in addition to a fairly heavy secular compensation. The dangers of abuse in favoring rich men will be discussed later. For the average person of that period, the money redemptions may justly be considered severe; and one must remember that considerable fasting and bodily suffering were still retained.[2]

In the penitential generally ascribed to Bede, canon i, occurs a passage on general alleviation or discretion, prescribing penance according to age, sex, condition, status, person and motive. The forms of penance are described as, "according to some, abstaining from food, according to

sunt solid. LXIIII. Potentes homines pro culpis criminalibus faciant, ut Zacheus ait: Domine omnium bonorum meorum dimedium do pauperibus; sit aliquit injuste abstuli in quadruplum reddam, et de mancipiis suis dimittat liberos et captivos et a quo die desinit peccare, non desinat communicare." But note carefully the following can. xiii: "*Qui per corpus peccat*, per corpus emendat, hoc est jejuniis et vigilibus et orationibus ad Dominum (or Deum)," and the following prescription of "*percussiones*" with prayers and psalms, according to the season. The italics are ours. The order in Schmitz II, 671 is much different but the content is practically the same.

[1] For homicide, adultery, perjury, fornication: *P. Egb.*, can. i: if a layman, four years; with higher penance for the clergy. *Vide* Wasserschleben 233; H. and S. III, 419. *Cf.* can. ii, for false witness and theft: if by a layman, one year; if by the clergy, higher; *vide* Wasserschleben 234. In can. iii, for parricide: seven or fourteen years, with exile. In can. iv, sect. 3, for incest with one's mother—fifteen years, etc. In can. iv, sect. 10, for homicide by the clergy—ten years. See the texts in the edition by Wasserschleben.

[2] *Vide supra.*

others, by giving alms, . . . prayer with genuflections and stations of the cross, the psalms." [1] This chapter, with the fuller canon ii, were probably the sources for very similar portions of the prologue [2] to the Penitential of Egbert. The specific prescriptions that follow do not use the term "to fast" (Lat. "*jejunare*"), but simply that for "doing penance" (Lat. "*poenitere*"). Specific money redemptions to be paid to the Church are lacking in the genuine text, though found in the appended later additions —canons ix-xii.[3] Hence, in contrast to the Penitential of Egbert, that of Bede did not encourage money commutations as an important means of penance; though the payment of secular compositions is enforced, as elsewhere, as a requisite for alleviation of penance in cases of fighting.

In the Frankish Penitential of pseudo-Bede II occur several passages granting commutations or redemptions, either in general or for specified offences. The most important provision is in *capp.* xli-xlix, after the precedents of Egbert and of Regino of Prüm, with a few comparatively slight variations.

In the Confessional of pseudo-Egbert, after a preface in which it is prescribed that alms be given in addition to penances, canon i provides alleviations similar to those in the Pseudo-Bede,[4] according to physical condition, age and

[1] H. and S. III, 327. Wasserschleben 220 and Schmitz II, 654 agree, with immaterial variants in spelling.

[2] *Cf. supra*, chap. i and *infra*, chap. iv, on its sources.

[3] *Vide locc. citt., supra*, in the editions by Wasserschleben, Schmitz, etc. For alleviation of penance in cases of fighting, *vide P. Bede*, can. iii, sect. 9, in Schmitz I, 560; *cf.* can. iii, sect. 11, providing composition in addition to penance.

For provisions in *Pseudo-Bede II, vide* Wasserschleben 261 and Schmitz II, 686-687.

[4] Wasserschleben 303; Thorpe, *Ancient Laws*, etc. 345: "Potentes severius judicandi sunt quam humiles, juxta sententiam canonis."

similar general conditions affecting the assignment of penance. But it adds a severe and significant remark: "That the powerful must be judged more severely than the humble, according to the sentence of the canon." [1]

Canon ii provides [2] that those who cannot fulfill all that is contained in the penances ought to sing psalms with genuflections, in proportion to the days of fasting similar to those described above; [3] but should fast at least two days in the week up to nones. Provisions for money redemptions are based upon an equation of one penny for one day, in addition to a fast of two days a week—one up to nones and the other to vespers. Following this there occur the equations of years for *solidi* as in the Penitential of Egbert; with a fast similar to the above and alms amounting to half the penitent's food through the three quarantines. The powerful or wealthy man, in expiating capital offences, is exhorted to give half his possessions to the poor. At the end of the section occurs again the severe admonition that "He who has sinned in his body, let him expiate also by his body," by fasting, vigils, prayers, tears and repentance.[4] A peculiar form of composition is found in canon xxii, for certain forms of wounds: that the offender make amends for the wounds, do the work of the victim until the wound is healed, and pay for medical treatment, as well as fast.[5]

[1] Wasserschleben, *loc. cit.*

[2] *Vide P. Egb., P. Ps.—Bede, supra.*

[3] *Vide* Wasserschleben 304; Thorpe, *op. cit.* 346.

[4] *Vide supra.*

[5] Thorpe *op. cit.*, 352, Wasserschleben 309: "Quicunque homo alium in genitalibus debilem fecerit, vel ei vulnus in faciem, emendet ei vulnus, et opus ejus operetur, donec vulnus sanetur; et mercedem medio solvat, et II vel III legitima jejunia jejunet; si nesciat quomodo id solvere possit, XII menses jejunet: Quicunque homo hominem occiderit, III annos jejunet; si postea hominis cognatis id compensare velit, tunc annum et dimidium jejunet."

These provisions evidence the humanitarian influence of this particular penitential. Closing this chapter is a provision for composition as commutation for homicide, similar to that in the Penitential of Theodore.[1]

In the Penitential of pseudo-Egbert (Book iv, canons lx and following), there are several important provisions for money redemptions. Canon lx provides that, if unable to perform penance, one may redeem his fast by piety and by his worldly possessions,[2] according to a scale descending according to the relative wealth or poverty of the penitent, discrimination being in favor of the poor or, at least, in proportion to their poverty. In contrast to the money redemptions of other penitentials and to the money compensations in the secular laws, in both of which the money payments are fixed for all classes, this chapter of the Pseudo-Egbert requires the rich to redeem the fast of twelve months by thirty shillings; the next less wealthy class by twenty shillings; the next class by ten; but the poor by only three. Such redemptions may be spent in three ways: Either given directly to the Church, or used in redeeming a slave, or in alms to the poor. Canon lxi contains passages[3] which, following the Penitential of pseudo-Bede, canon xlvi, allow the redemption of a day's fast by one penny or by two hundred psalms, with genuflections; and shows how a fast of seven years may be redeemed in one by chanting of psalms and partial fast.[1] Canon lxii, also resembling sections in the above chapter of the Pseudo-Bede, provides for the redemption of days or months of fasting by masses. Canon lxiii mentions twelve methods[2] for remission of sins. Besides the above general provisions for commutations, the Penitential of pseudo-Egbert (Book ii, canon xxv) prescribes, for petty theft, simple restoration and one year of penance on bread and water; or, in default of restitution, three years on bread and water.[3]

The pseudonymous Canons of Eadgar, a work really compiled by an Anglo-Saxon canonist, largely from Frankish sources,[4] has been assigned too great an importance by writers[5] who deal with the commutation system. Originating very late[6] in the period of the Penitentials, it contains

[1] *Vide* Wasserschleben 309 *et. seq., cf. P. Th.* I, iv, 5.

[2] Wasserschleben 340, Thorpe *op. cit.*, 385: "Si quis prae infirmitate sua, vel mollitie, jejunium vel austeritatem perferre nequeat, quam confessarius ejus ei praescripserit, ei permissum erit jejunium suum redimere pietate et mundanis suis possessionibus: id est ergo, si dives sit, pro XII. mensium jejunio, det XXX. solidos, id est, in sermone nostro, XXX. scillinga; si tantum facultatis ei non suppetat, tunc XX. solidos det; si autem tantum facultatis ei non suppetat, X. solidos det; si denique indigens homo sit, ut X. (dandi) facultatem non habeat, III. solidos det; quia dives potest facilius XXX, solidos dare quam pauper III. Legitimus solidus semper est XII. denariorum. Hujusmodi eleemosynae tribus modis erogandae sunt: unus est, ut super Dei altare deponantur; alter, ut homo ex servitute redimatur, et deinde liberetur; tertius, ut Dei egenis distribuantur."

[3] Wasserschleben 341; Thorpe, *Ancient Laws*, etc. 385.

[1] "Una missa VII dierum jejunium quis redimere potest; et X (missis) III mensium jejunium quis redimere potest; et XX missis VII mensium jejunium quis redimere potest; et XXX missis XII mensium jejunium quis redimere potest; si cum vero Dei amore pro se ipso supplicare velit."

[2] Wasserschleben 341-342; Thorpe, *Ancient Laws*, etc, 385-386; *cf. supra.*

[3] Wasserschleben 328; Thorpe, *op. cit.* 372: "Si quis homo rem mediocrem furatus sit, ... in pane et aque jejunet," etc. It resembles *P. Ps—Th., can. viii,* sect. 2; but, on this chapter, *cf. supra,* chap. i, for Hörmann's critical notes.

[4] On its authorship, see Hörmann in *Fitting's Mélanges,* (Montepellier, 1908), *II, passim*; Liebermann, *Gesetze,* etc. II, *s. v. "Canones Eadgari," "Ponitenz,"* etc., and I, *"Einleitung,"* but especially Mone, *Quellen und Forschungen, ut supra,* chap. i, and *infra,* chap. iv.

[5] Especially Schaff and other writers on church history; see the list, *infra,* "General Bibliography."

[6] *Cf. supra*—in the tenth century, whereas the bulk of important penitentials for Great Britain lie before the ninth. *Vide,* also, *infra,* chap. iv.

several sections which deal with commutations or with substitutions, sometimes in a manner distinctly different from that of other penitentials.[1]

After several provisions for commutations by money, psalms, or masses, resembling those previously mentioned, there occurs a peculiar passage.[2] The section "Of Powerful Men," carries the principle of commutations and substitutions to the extreme. After full confession, forgiveness of enemies, and promise of cessation, the powerful man, "and rich in friends," "undertakes penance with much sighing." Laying aside his weapons and vain ornaments, he must

take a staff in his hand, and go barefoot zealously, and put on his body woollen or haircloth, and not come into a bed, but lie on a pallet, *and so do that in three days the series of VII years be dispensed with thus: let him proceed with aid; and first let him take to him XII men,* and let them fast three days on bread, and on green herbs, and on water; *and get in addition thereto,* in whatever manner he can, *seven times CXX men,* who shall also fast for him III days; and then will be fasted as many fasts as there are days in VII years.

3. When a man fasts, then let the dishes that would have been eaten be all distributed to God's poor; and the three days that a man fasts, let him abandon every worldly occupation, and by day and by night, the oftenest that he can, let him remain in church, and with alms-light, earnestly watch there, and cry to God and implore forgiveness, with groaning spirit,

[1] But can. iii. (Thorpe, *op. cit.* 410), contains provisions for alleviation according to age, physical condition, etc., like those mentioned *supra.* Can. xvii has a severe penance; but can. xviii, regarding a sick man, has provisions for money redemptions and psalms like those of *P. Ps-Egb., Conf. Ps-Egb.,* and *P. Bede, supra.* Can. xix has the method for redeeming seven years in one, as mentioned *supra. Cf.,* also, can. lxv (Thorpe, *op. cit.* 401): "the priest also assists in the penance."

[2] "*Be Mihtigum Mannum,*" *vide* Thorpe, *op. cit.,* 414-415, for A-S. The italics are ours.

and kneel frequently on the sign of the cross; sometimes up, sometimes down, extend himself; and let the powerful man try earnestly to shed tears from his eyes, and bewail his sins; and let a man then feed those three days as many of God's poor as he possibly can; and on the fourth day, bathe them all, and shelter them, and distribute money; and let the penitent himself employ himself in washing their feet, and let as many masses be said for him on that day as can possibly be obtained, and at the last, let absolution be given him, and then let him go to housel, unless he be so highly criminal that he yet cannot; and then let him at least promise, that he ever henceforth will perform God's will; and, through God's succour, ever abstain from every unrighteousness to the utmost of his power; and his Christianity righteously uphold, and every heathenism totally cast away; both thoughts and habits, words and works, diligently correct; every righteousness promote, and unrighteousness suppress, through God's succour, as he ever most diligently may; and to his own great benefit he does it, who performs that which he promised to God.

This is the alleviation of the penance of a man powerful, and rich in friends; but one not possessing means may not so proceed; but must seek it in himself the more diligently; and that is also justest, that every one avenge his own misdeeds on himself, with diligent 'bot.' Scriptum est enim: Quia unusquisque onus suum portabit."[1]

In summary of the preceding, it is therefore seen that the practice of commutations in the Penitentials was not universally uniform in the group selected; that they were scarcely ever used without restriction in these penitentials; that the general principles regulating the assignment of penance in these codes were often according to general

[1] On this extract, *cf.* Liebermann, *op. cit.* II, 618, 5, after Thorpe, *op. cit.* 414. On the unusual nature of these provisions, Liebermann remarks: "Die Gesetze haben nichts derartiges"; but later adds "wohl aber heilt Almosen als Fasten-Ersatz, Sünden," after *Legg. Hn., 72,* 2b.-3a. But *cf.* Liebermann, *op. cit.* II, *s. v.* "*Armenpflege.*"

norms[1] of authoritative penitential canons; and that the possession of a penitent and contrite heart and a determination to lead a better life were required. But, in spite of the silence or minimising of commutations in the Penitentials of Theodore, Bede,[2] most members of the Theodore-cycle,[3] and the late *Modus Imponendi Poenitentiam*,[4] and Canons of Aelfric; and the denunciations of the practice by the Council of Clovesho,[5] the practice of commutations in England apparently became more extensive after the Penitential of Egbert.

Several cautions, however, are necessary in discussing the effect of this system. First of all, to what extent were commutations used with penance continued, or in addition to penance; and to what extent might they suffice alone? Again, how extensively were each of the various forms of commutations used in these penitentials? Furthermore, in summarising the effect of the commutation system, one must take into account the relative viewpoint, and, to some extent, view the question from the standpoint of the secular customs of that time as well.

In answer to the first question, the greater number of the English penitentials did not allow commutations alone to suffice,[6] but still required partial performance of penance,

[1] I. e. according to age and various physical disabilities. On the general regulations in other canons, *supra*, chap. ii.

[2] In the portions originally attributed to him, but found in the later additions; *cf. infra*, chap. iv.

[3] E. g. *Cap. Dach.*, *Can. Greg.*; see Wasserschleben edition.

[4] *Vide* Thorpe *op. cit.*, 405 *et seqq.* *Cf. P. Egb.*, *Conf. Ps.-Egb.*, *P. Ps.-Egb.*, *Can. Ps-Edg.*; the late *Eccles. Institutes*, in Thorpe, *op. cit.*, 466-467. For secular regulations, etc., *infra*, especially chap. v.

[5] Cans. xxvi-xxvii. *Vide* Schmitz I, 148, after Harduin; H. and S. III, 371-374.

[6] E. g. *P. Egb.* can. xiii, sect. 11; Schmitz II, 671; Wasserschleben, 247-248, *cf.* 245-246; H. and S. III, 429-430. *Cf. P. Bede, supra. Cf.*

even by the sick, to whom alone commutations were usually allowed. Only in relatively late penitentials do we find a few instances of commutations sufficing in themselves. Even then, for the most part, they are merely alternatives to stricter provisions and usually of Frankish origin, introduced from the Continent into England. The forms characteristically native in the Anglo-Saxon penitentials were, apparently, money redemptions, psalms with genuflections, and, less probably, the performance of penance by substitutes.[1]

Turning now to the question of the frequency of each form of commutation, we shall first discuss that of money redemptions. Of the forms of money redemptions, we find the payment of secular compositions mentioned in practically all of the English penitentials,[2] sometimes in addition to penance,[3] sometimes as commutations for part of penance.[4] While direct money payments to ecclesiastical authority are absent in the Penitentials of Theodore and his cycle,[3] and in the original, early portions of that of Bede; they are found in the Penitential of Egbert, the later

Conf. Ps.-Egb., can. i, an especially severe penance (Wasserschleben 303; Thorpe, *op. cit.*, 345). *Conf. Ps.-Egb.*, can. ii insists on a fast of two days in addition to commutations. But notice especially the portion beginning "Qui per corpus peccat," etc., in Wasserschleben 304; Thorpe, *op. cit.*, 346, also referred to *supra*. Also, *cf.* can. xxi, in Wasserschleben 309; Thorpe, *op. cit.* 352. *Cf. P. Ps.-Egb.*, *lib.* iv, cans. lx *et seq.*, for provisions if unable to perform penance; Wasserschleben 340; Thorpe *op. cit.* 385. For *contra*, can. lxi, of Frankish origin; Wasserschleben 341; Thorpe, *op. cit.* 385.

[1] The performance of penitential acts by substitutes is mentioned, in the English groups, by the pseudonymous *Canones Eadgari* alone; *vide supra*.

[2] *Infra*, chaps. v-vi, on secular compositions.

[3] On compositions additional to penance, *infra*, chap. vi.

[4] On compositions as part commutation, *infra*, chap. vi.

[5] Except *P. Sangerman.*, *q. v.* in Wasserschleben, *passim*.

additions to that of Bede,[1] the Pseudo-Bede, the Confessional of pseudo-Egbert, the Penitential of pseudo-Egbert, and the *Canones Pseudo-Eadgari*. In all of these, the rate usually follows that of the Penitential of Egbert, which, as we have seen, was severe.

The chanting or singing of psalms by the penitent is, in general, found as a commutation in most of those English penitentials which have also money redemptions, and absent where those are missing.[2] As distinct from chanting of psalms as penance for less important sins [3] this commutation is found, with genuflections, in the Penitential of Egbert; the later additions to that of Bede; the Penitential of pseudo-Egbert; the Pseudo-Bede; and the pseudonymous *Canones Eadgari*.[4] Sometimes the definite numbers are taken from Frankish sources,[5] sometimes after the Penitential of Egbert. Commutations by prayers are also found in the same penitentials, accompanying the above. Both of these forms are usually found in addition to partial penance, or as alternatives to money redemptions or penance, probably in cases where the penitent could neither fast nor pay.[6]

The chanting of masses by the priest, as a substitute for

[1] Cans. x *et seq., q. v.* in Wasserschleben, Schmitz, etc.

[2] Absent in *P. Th., Cap. Dach., Can. Greg., P. Mart., and P. Bede* (earlier portions); present in *P. Sangerman.*

[3] For self-pollution, neglect of divine service, etc., by the clergy; also for unnatural fornication, breaking regulations on the "unclean," *vide P. Egb.*, cans. ix, sects. 7-11, (Schmitz II, 669), xi, sect. 8-9, xii-xiii, (Schmitz II, 670). *Cf. Ps. Bede*, can. viii, sect. 4, (Wasserschleben 263, *cf. Egb.*, ix); *P. Bede*, can. ii sect. 36, (Schmitz I, 558); *cf. Conf. Ps. Egb.*, can. v, (Wasserschleben 305); also can. xl, (Wasserschleben 317.)

[4] *Vide supra.*

[5] *Vide supra.*

[6] But see the general provisions granting discretion to the priests in assigning penance, according to age, etc., *supra*, chap. ii. On partial penance, money redemptions and commutations in general, *supra*, chap. ii.

penance by another penitent is not characteristic of the native English penitentials. It is absent in the Penitential of Theodore and its cycle; in the original portions of the Penitential of Bede; and in the Confessional of Egbert, as well as in the Canons of Aelfric and the passages in the Anglo-Saxon Laws. It is present in the later additions to the Penitential of Bede, in the pseudo-Bede, and in the Penitential of pseudo-Egbert. All of these sections are considered as probably coming late in the period studied and from Frankish [1] sources.

As regards the use of income to the Church as commutation for penance, careful regulations were passed by the later Anglo-Saxon Laws.[2] This income was to be used by the Church for spiritual objects only. According to *VI Ethelred*, 51, and *III Cnut*,[3] 54: "If money fine comes in on account of church penance, as the *witan* have established, then shall that . . . . serve for the purchase of prayers and for advantage of the poor, and for repair of churches; and for education, and for clothing, support, books, bells, and church-vestments of those who serve God and never for worldy, vain adornments, but for spiritual purposes." On the other hand, it is very possible that such laws were necessitated by abuses in the use of church-income from commutations.

On reviewing the data previously discussed on commutations, it is therefore evident that the customary, current discussions of this subject are extremely exaggerated, especially because they generalize broadly for the whole period,

[1] *Vide supra*, on commutations in general for references; *cf. infra* on sources.

[2] *Vide* Liebermann II, 618, "*Pönitenz*," no. 5a. *Cf.*, also, *s. v.*, "*Armenpflege*," "*Kirche*."

[3] Liebermann *loc. cit.*, vol. i, 614, 259. Liebermann considers that *III Cn.* was later than *Cnut*, probably *ca.* 1095-1135.

with little allowance for individual variations, especially in very influential penitentials, such as those of Theodore, the Theodore cycle, and the original portions of that of Bede.[1] Moreover, in common with many modern works on the secular laws of that period, they utterly fail to consider the relative severity of the money redemptions, as expressed in terms of modern purchasing power; and also neglect the important question of the cooperation of ecclesiastical with secular law, especially in the matter of secular compositions in the Penitentials. By such neglect, they treat the matter in an artificial manner, far different from the actual facts. One cannot gain a true picture of the actual operations of law in those times by such an arbitrary, bookish separation of domains which were closely linked in operation and effect.

Furthermore, one cannot view the commutations of that period according to the same *criteria* as the question of indulgences in the days of the Reformation. While making due allowance for the probability that the latter were materially influenced by the former, yet, in the operation of law, the psychological reactions of people of the two periods towards commutations of penance were probably very different. This follows from the facts that money compensations constituted the usual secular penalties in the period of the Penitentials while, by the time of the Reformation, severe corporal punishments of various forms were used by the secular laws for the chief crimes.[2] On the other hand, though the commutation system was neither so uni-

[1] For secondary literature on commutations in the Penitentials, *vide*, also, *infra*, "General Bibliography."

[2] On the subject of compensations in the secular laws of the Anglo-Saxons, *vide infra*, chap. v.

On penalties of the Reformation period, see the various well-known encyclopedias of the history of law.

versal nor so mild as often represented, yet, at least in the late Anglo-Saxon period, the tendency of later penitentials led towards possible abuses.

In those penitentials which allowed money redemptions of penance, the greatest fault was not so much great mildness in the penalty, as the discrimination in favor of the rich or well-to-do. Most of these penitentials allowed only one rate, so high,[1] as we have seen, that it could have been paid only by those who were comparatively well-to-do.[2] But in some few chapters are found provisions for acerbating the penance or commutation for the wealthy,[3] or for a scale of money redemptions in proportion to the wealth of the penitent.[4] In these few provisions the spirit is markedly in contrast to the discriminatory tendency of the secular laws.

[1] *Cf. supra*, under the discussion of money redemptions in the Penitential of Egbert.

[2] *Vide infra*, chap. v, on secular discriminations.

[3] See especially *Conf. Ps. Egb.*, can. i, (Wasserschleben 303; Thorpe, *op. cit.*, 345): "Potentes severius judicandi sunt," etc.

[4] For a descending scale of redemptions, from rich to poor, see, especially *P. Ps. Egb., lib.* iv, can. lx, in Wasserschleben 340, Thorpe, *op. cit.*, 385.

CHAPTER IV

The Literary History of the English Penitentials

The very prominent position of penance among the Christian Anglo-Saxons [1] naturally favored the extensive use of penitential codes. Many penitentials and penitential canons are extant which either originated among them or were introduced from the Continent for use in the English Church in whole or in part. For practical purposes, therefore, we shall include in our discussion the chief penitentials which were apparently used by the Anglo-Saxon Church, whether native or imported. But penitentials will be classed in either of these two divisions in order to distinguish between native practices or movements and those which, either in nature or degree, were innovations [2] from abroad.

Among the apparently native penitentials were those of Bede and of Theodore; some of the English Theodore-cycle; [3] and, possibly, one of the two so-called versions [4] of the pseudo-Bede or Compound Penitential of Bede-Egbert. While the penitentials or similar sets of peniten-

[1] *Vide supra,* chap. iii, on penance among the Anglo-Saxons; also, *infra,* chap. v, on penance in the Laws of the Anglo-Saxons.

[2] *Cf. supra,* chaps. ii, iii, on public penance, commutations, etc.

[3] *Vide supra.*

[4] I. e., that published by Albers, *infra,* this chapter.

tial canons of foreign origin [1] included the Egbert-cycle,[2] some versions of the pseudo-Bede,[3] the pseudonymous *Canons of Edgar,*[4] the *Ecclesiastical Institutes,* the *Institutes of Polity,* the *pseudonymous Excerptiones Egberti,*[5] the pseudo-Theodore [6] and similar late compilations.

The best editions are those of Haddan and Stubbs, Wasserschleben, and Schmitz.[7] Among these the critical notes and versions of Haddan and Stubbs are particularly fine; though they add nothing, in many respects, to the excellent work of the pioneer Wasserschleben and need some minor revisions on variants from the later works of Schmitz.

SECT. I. THE PENITENTIAL OF THEODORE AND ITS ENGLISH CYCLE

At various times and by various writers, several penitentials have been ascribed to Archbishop Theodore of Canterbury (*ca.* 668-690). The tradition that Theodore, him-

[1] I. e., of foreign authorship, or largely from Frankish sources of that period. For a good brief sketch of the three stages in the history of the Penitentials in Great Britain, *vide* Stubbs, in *Select Essays,* I, 252-253.

[2] The Confessional of pseudo-Egbert and the Penitential of pseudo-Egbert, as distinct from the compilation of conciliar decisions known as *Excerptiones Egberti.* For possible influence on the pseudo-Bede, *infra,* that head.

[3] E. g. those of Wasserschleben and Schmitz *infra, passim.*

[4] *Vide infra, passim,* that head.

[5] *Vide supra.*

[6] *Vide supra,* chap. i.

[7] H. and S. III contains the penitentials of Theodore, Egbert and Bede, which are also found in the edition by Schmitz; while Wasserschleben's edition contains also the Penitential of pseudo-Egbert and the Confessional of pseudo-Egbert, after Thorpe, as well as the Theodore-cycle. Thorpe's texts of the native penitentials are poor or spurious. He adds the Penitential of pseudo-Egbert, the Canons of Edgar, the *Excarpsus Egberti* and the Confessional of pseudo-Egbert—all as genuine; the Ecclesiastical Institutes; and the Canons of Aelfric. On the editions by Kunstmann, Hildenbrand, Berbner, etc., *infra.*

self, composed a penitential, is as old as the latter half of the eighth century, when the *Liber Pontificalis* and, after it, Paul Warnefrid assert that Theodore "described the sentences for sinners—namely what each ought to do in penance and how many years for each and every sin," [1] etc. This assertion is repeated by Irish and Frankish penitentials from that time forward; and, afterwards, by Rhabanus Maurus, a pupil of Alcuin, by Regino of Prüm and by others.

These references to a penitential composed by Theodore are offset by the remarkable silence of Bede on the subject; by the similar silence of later English sources, except where copied from Paul Warnefrid, and by "the fact that the work . . . . might easily be mistaken by later and less learned scholars than Bede for a direct work of Theodore." [2] Yet there is abundant reason for attributing the substance of the work to Theodore, if not the actual writing. Hence,

[1] "Peccantium judicia, scilicet quantos annos pro unoquoque peccato quis poenitere debeat, mirabili et consideratione descripsit." *Vide* H. and S. III, 173 *et seqq.*; Schmitz I, 510 *et seqq.*, 3 *et seq.*, 109 *et seqq.*, 387 *et seqq.*, 119, 144, 177, 510, 520, 557 *et seqq*, and II, 113 and passim. Wasserschleben 13-37 has fuller citations from the sources, including also, e. g., the *Hibernensis*, (8th. century), and later collections of canon law. *Vide infra*, on individual penitentials, for mention by them of Theodore's penitential. Also, for references in the Frankish sources, *supra*, chap. i, *passim*.

Numerous, modern discussions of the Penitential of Theodore are to be found in manuals of canon law; those on church history; and those on the institutions of penance, confession and the like. *Vide infra*, "General Bibliography," for the list. For the time when they were written, there are especially good summaries in *DCA.*, Herzog-Hauck, *KLex*, and *Cath. Ency.* For critical remarks on the textual relations of this penitential with others, *vide supra*, chap. i, the critical articles cited on other penitentials by Fournier, Hörmann, Seebass, Zettinger and others; also *infra*, on individual English penitentials. Watkins, *History of Penance* 649-650, has a brief but usable summary.

[2] *Ralph De Diceto*, A. D. 1200, copies from Paul whose words are given *in extenso* by Elmham, (15th century); H. and S. III, 173.

it is generally considered by present-day scholars as composed of "determinations" or "judgments" voiced by Theodore but actually received by a priest named Eoda from Theodore himself, and later edited by a self-styled "disciple of the Umbrians." [1]

Among the several versions which have been ascribed to Theodore by various writers, the only version which is now generally accepted by scholars is that edited by Wasserschleben,[2] Haddan and Stubbs,[3] and Schmitz.[4] In the Wasserschleben edition, the Penitential of Theodore is edited from several Continental manuscripts,[5] without, however, employing a better and more ancient manuscript [6] in England, published by Haddan and Stubbs, with variants

[1] *Discipulus Umbrensium*," H. and S., Schmitz, Wasserschleben, *locc. citt.*, and the modern authorities cited *supra*, note 1. The summary of arguments in favor of Theodorian origin, even if not direct authorship, is best given by H. and S. III, 173-174. Besides the above, strong evidence for the composition by Theodore is found in two citations of Theodore by name, with borrowings, in *P. Egb. Prol.* and can. v, sect. 11; as also in the *Cod. Can. Hibern.*, of which one MS. is at least of the eighth century. *Vide* H. and S. III, 174; Wasserschleben *loc. cit.* and 25-26; and Schmitz *locc. citt.*

Watkins *op. cit.* 649-650, believes this "*discipulus Umbrensium*" to be a disciple of the north-country teachers who is himself from the south. He has studied in the north and now commends the work of Theodore to all English Catholics. Watkins infers that, so far, it had found vogue only in the north, "where the private system of Penance would already be employed so far as there was any practice of Penance at all."

[3] Wasserschleben 182-219.

[3] H. and S. III, 173-213, from MS. *C. C. C. C.* 320, considered by Haddan and Stubbs as the most ancient of all these MSS., probably not later than the eighth century. The references to another copy in this MS. seem to indicate that it is not the original.

[4] *Vide infra.*

[5] Wasserschleben 182, note 1.

[6] *Vide supra.*

from Wasserschleben. In the first volume of the edition by Schmitz,[1] still another manuscript[2] is chiefly followed, without variants, in general. His edition has been especially criticised by Albers and others, as noted above; but it is especially useful for the index and contains no very great deviations from the two other editions cited.[3] The second volume of the Schmitz edition,[4] like that of the first volume, includes a list of the manuscripts also used by Wasserschleben, but entirely omits mention of the better manuscript used by Haddan and Stubbs. This volume of Schmitz' edition, however, includes variants from the other manuscripts.

Besides the above penitential, which is accepted as genuine, there are three other distinct works, with varying titles and in various editions. The pseudonymous *Capitula Theodori*[5] have been edited by D'Achèry[6] and by Martène and, in a variant edition, by Kunstmann, as *Canones*

[1] Schmitz I, 524-559.

[2] Viz. *a. Cod. Vindob., no. 2195, fol. 2.*

[3] For individual variants of the three editions *vide locc. citt., supra.*

[4] Schmitz II, 543-544. The text is in Schmitz II, 545-556 and Book II in pp. 566-580, apparently considering the two books as of separate authorship. Schmitz' critical remarks concerning Book II are on pp. 557-565. The numbering of the canons in Schmitz' edition of Book I, as well as some of the rubrics, vary from that in Wasserschleben and in Haddan and Stubbs. *Vide* Wasserschleben 200-202; H. and S. III, 189-191; and Schmitz II, 556, can. xvi.

[5] For excellent summaries of the following, *vide* H. and S., Wasserschleben and Schmitz, *locc. citt.*; and supra, chap. i, for materials on the Pseudo-Theodore.

[6] In *Spicilegium* IX, (Paris, 1669), containing one-hundred twenty canons, which Wasserschleben reprints as one-hundred seventy-one *Capitula Dacheriana.* For other reprints: Labbe and Cossart, *Concilia* VI, (Paris, 1671, 1875); J. Petit, (Paris, 1677, with others); and in a new edition of D'Achèry edited by F. J. De la Barre, (Paris, 1723), with the notes of Baluze and of Martène. Martène increased them to one-hundred sixty-eight chapters by adding from the canons of the Iro-Scottish monk Adamnan.

Gregorii. According to Haddan and Stubbs,[1] they are "a disorderly congeries of articles, all of which, with one or two exceptions, are to be found in the work of the Discipulus." Other *Capitula Theodori,* edited by Petit and Favier[2] are Frankish canons of much later date than Theodore, coming down to the tenth century. They contain very little that is verbally akin to the other works that appear under Theodore's name, though they apparently use the Penitential of pseudo-Theodore.

Though the above members of the Theodore-cycle were probably all Frankish in origin, the presence of manuscripts[3] in England and the translation of some canons into Anglo-Saxon[4] may mean that they found some use there, even if they may have been little used in comparison with others.[5] In using their canons as evidence today, one must collate very carefully[6] with native penitentials and penitential materials, in order to ascertain what were native and what foreign customs.

The sources for the Penitential of Theodore possess special significance because of their effect upon its influence and from their value as sources of information on contemporary practices. Next to the scriptures,[7] Theodore used the cur-

[1] *Vide supra.*

[2] *Vide* H. and S. III, 175; Schmitz I, 512-513; Wasserschleben 16, 119, 145. Frankish in origin, they are partly translated into Anglo-Saxon in Thorpe, *Ancient Laws* 307. This compilation is similar to the pseudonymous *Canones Gregorii* published by Wasserschleben; also, as the *Dicta Theodori,* by Schmitz II, 521 *et seqq.*; *cf.* II, 510-521.

[3] *Vide* Wasserschleben 16-17, 21, 145, note 1 and 160, note 1.

[4] *Vide supra,* chap. i, on the *Capitula Theodori.*

[5] E. g. the cycles of Bede and of Egbert, *q. v. infra,* this chapter.

[6] For examples of the careless use of pseudonymous works, see the references in the "General Bibliography."

[7] *Vide* Wasserschleben 26. See the editions cited *supra,* chap i. Examples of such borrowing are cited in the editions of Theodore,

rent collection of the canon laws by Dionysius Exiguus, brought by Theodore to the English Council of Hertford, (*ca. A. D.* 673), by which it was officially adopted. As was natural from his nativity and training,[1] he drew upon Greek[2] practices as well. He cites very frequently from the Canonical Letter of Basil[3] to Amphilochius. Possibly, too, Theodore made some use of the *Novellae* of Justinian. Earlier British penitentials furnished materials for several passages which are so important as to merit separate attention. In the classification of sins, it is possible that the Penitential of Theodore was influenced by the work of Cassian,[4] either directly or through some of the earlier British penitentials that had used Cassian.

From the earlier British penitentials, the Penitential of Theodore contains several borrowings from the Penitential of David[5] and from the synods of Brevi[6] and of *Lucus Victoriae*;[7] also numerous borrowings or adaptations from

passim, particularly in Book I. Wasserschleben also notes parallels between Theodore and the *Canones Apostolorum*, the Nicene Council and other sources; *vide* Wasserschleben 26 and *passim*.

On the Council of Hertford, *vide* Bright *Early English Church* 277 *et seqq.*; the text of its acts in H. and S. III, 118-122; and Liebermann, *Gesetze der Angelsachsen* II, *s. v.*

[1] The list of references on Theodore in Chevalier, ... *Bio-bibliographie* must be used with great caution as many spurious works are cited as genuine.

[2] *Vide* Wasserschleben 195-197, 204-205, 209-210.

[3] *Vide* Wasserschleben 27 and note 1, 193, 197, 185, 209, 213; H. and S. III, 188, 178, 196, 199.

For borrowing from Gregory of Nazianzen: Wasserschleben 186, 205; H. and S. III, 179, 193. References to "the canon" by Theodore sometimes refer to Basil, at others to the *Dionysiana*.

[4] *Vide supra*, chap. i, on the sources for the Penitentials.

[5] Wasserschleben 27 and note 2. This influence may have been direct or, possibly, through the "*libellus Scottorum*."

[6] *Cf.* Wasserschleben 103 and 185.

[7] *Cf.* Wasserschleben 104 and 185.

the Penitential[1] of Vinnian. A significant reference in Theodore is borrowed almost literally from Title II of the *Canones Hibernenses* ("*De Arreis*");[2] and several penances in Theodore's penitential resemble those of Title[3] I of the same collection. It would, therefore, seem that the *Canones Hibernenses* exerted a strong influence upon the Penitential of Theodore. Though the differences in wording suggest that this influence may have been indirect, through another version than that edited by Wasserschleben; or that the borrower rephrased considerably what he borrowed. In view of the similarity of substance but difference in wording between some sections of the British and Irish penitentials and those of Theodore, just discussed, it seems probable that they may have been known to Theodore in versions dif-

[1] For important borrowings from Vinnian, *vide* Wasserschleben 118, 194, 198, 116, 117. For Gildas' influence, *ibid.* 106, 197.

[2] *Cf.* the very important passage on commutations in *P. Th.*, can. vii, sect. 5, in Wasserschleben and H. and S., with *Can. Hibern.*, Tit. II, can. vi of "*De Arreis*," (Wasserschleben 140). The Penitential of Theodore has "Item *XII triduana pro anno* pensanda, Theodorus laudavit," while *Can. Hibern.*, Tit. II, can. vi has "Arreum *anni XII triduana*." (The italics are ours). Also there are frequent allusions to payment of redemptions by means of slaves, especially by "ancillas" among the Irish, in *Can. Hibern., Tit. I*, cans. viii, x, xi and in *Tit. III*, "Patricius dicit" etc. *Tit. IV*, cans. ii, iii have an equation of a year of penance with one slave, (Wasserschleben 137, 141, 142). This is remarkably like *P. Th., Lib. I*, can. vii (Wasserschleben 191, agreeing with other editions): "De aegris (variant egressis) quoque pretium viri vel ancillae pro anno," with an alternative commutation. *Cf.* other Irish references on commutations, *supra*, ch. iii.

[3] Especially *cf. P. Th., Lib. I*, can. iv, sect. 3—seven years for homicide or ten, with *Can. Hibern.*, Tit. I, can. iii—for homicide, seven years on bread and water or ten, (Wasserschleben 136-137, 188, agreeing with other editions). *Cf.*, also a penance of seven years on bread and water with one of simply seven years, (Wasserschleben 126, 189—the latter citing *P. Th.*, can. xi, sect. 6). *Cf.*, also a penance of forty days for eating flesh torn by dogs in *Can. Hibern.*, Tit. I, can. xiv (Wasserschleben 137) with a similar sentence for eating flesh torn by beasts in *P. Th.*, can. vii, sect. 6, (Wasserschleben 191).

ferent from those edited by Wasserschleben.[1] Possibly some of them were known to him or to the "disciple of the Umbrians" in another compilation which may have contained materials from some or all of the above. This leads us naturally to discuss what is possibly another source for the Penitential of Theodore.

In the preface[2] to the Penitential of Theodore, mention is made of a certain "*libellus*" of the Scots as one of the sources for the Penitential. Even more specific mention[3] of the same "*libellus*" is found in Book I, can. vii, sect. 5. This passage[4] would seem to indicate that the matter preceding it had been taken directly from the "*libellus*", together with other[5] material. But the passage[6] in the Peni-

[1] *Vide supra*, on comparisons of *P. Th.* with *P. Vinn.*, *P. Gildas*, *Syn. Vict.* and *Syn. Brevi.* But, possibly, Theodore may have changed the wording.

[2] *Vide* Wasserschleben, H. and S. and Schmitz II, *passim.*

[3] See the comparisons in the notes, *supra;* also *supra*, on commutations. For the following quotation, *vide* Wasserschleben 191; H. and S. III, 183. Schmitz I, 530 and II, 650, alone, have the variant "*Degnis*" with variant note "*egris*," in the passage on commutations. It also has a variant "*Sanctorum*" for "*Scottorum*," but the latter is found in the preface in Schmitz II, 545.

Watkins, *op. cit.* 649, believes that the priest Eoda, who took down Theodore's answers to his questions on penance, was a "north-country priest who, having in his hands one of the fragmentary Celtic penitentials, proceeded to question Theodore *seriatim* from it and to compile an improved penitential from his pronouncements." Watkins also believes that the "*libellus Scottorum*" may have been a book preserved at Lindisfarne that preserved all the traditions; *op. cit.* 651.

[4] "Ista testimonia sunt de eo, quod in praefatione diximus de libello Scottorum, in quo, ut in ceteris, illa aliquando inibi fortius firmavit de pessimis, aliquando vero lenius, ut sibi videbatur, modum inposuit pusillanimis;" *vide locc. citt., supra.*

[5] Variants for "*Scottorum*"="*Scorum*," "*Sanctorum*," *vide* H. and S. III, 183, n. 4 and Schmitz, *loc cit.* "*Illa*" is omitted by Wasserschleben but included by H. and S. and by Schmitz.

[6] Variant in *a: lentius; vide* H. and S. III, 183, n. 6.

tential of Theodore previously mentioned is located directly after the significant borrowings from the Irish canons and precedes another passage[1] in Theodore's penitential which appears, also, to have been borrowed from the *Canones Hibernenses*. Hence it would seem that the "*libellus Scottorum*" used by Theodore included portions from the *Canones Hibernenses*. The passage that we have cited from Theodore also states that he transformed some penances of the "*libellus*" by making them sometimes milder, sometimes harsher. In conclusion, therefore, there is some possibility that the "*libellus*" was itself either the *Canones Hibernenses* or a compilation that included the passages from the Irish canons that were afterwards borrowed by Theodore.

The fact that the penances were thus modified makes it almost, if not quite impossible to trace further definite borrowings of definite penalties. The presence of slightly modified borrowings from the penitentials of Vinnian, Gildas, and the British synods, as noted above, would also seem to indicate that they may have been included in the "*libellus*", if not used separately.

When one adds the borrowings of the Penitential of Theodore from the "*Canones Hibernenses*"[2] and from the Penitential of Vinnian,[3] the total minimum of borrowings from Irish sources is eight decisions or "*judicia*" dealing with such capital subjects as commutations, homicide, theft, adultery, fornication with a nun, virgin, or slave.[4] While

[1] "Aliquando inibi fortius firmavit de pessimis", "aliquando vero lenius", etc., in *loc. cit.*

[2] For materials borrowed from them, *supra.*

[3] *Cf.* on borrowings from *P. Vinn.*, *supra*, and the excellent articles by Fourner, cited *supra*, chap. i.

[4] *Vide supra*, notes for references; one might also add legitimately the Irish portions on slaves as commutation, as they appear separately from the "*triduana*" in Irish sources.

the borrowings from Welsh sources, according to Wasserschleben, total at most seven or eight, but deal with less grievous offences and matters of limited import, such as sodomy, masturbation, neglect of ecclesiastical service, the "unclean,"[1] with, however, one very important borrowing on fratricide from the Welsh synod of *Lucus Victoriae.*[2]

The well-known, prominent and influential position of Theodore and his successful efforts in further organising the English Church seem to indicate that the Penitential under his name exercised considerable direct influence. Coming at the time of more thorough extension of Roman[3] authority over the English Church, the provisions of this Penitential for the suppression of the Celtic[4] heresy were

[1] *Vide supra,* notes on Wasserschleben penitentials and *P. Th.,* also *cf.* Wasserschleben edition of *P. Th.* for Gildas. The exception noted from *Sym. Vict., supra,* Wasserschleben 104, *cf.* 188.

[2] For the foregoing comparison and the following passage upon the textul influence of Theodore's penitential, free use has been made of the excellent references of Wasserschleben and of Haddan and Stubbs, *locc. citt.* After quoting "Ista testimonia . . . . Scottorum," from Theodore, Wasserschleben remarks merely, (pp. 27-28): "Jener libellus war wahrscheinlich eine Sammlung irischer oder schottischer Kanonen, welche Theodor in einem Weisthum ergänzt und modifizirt hat. Weiter unten wird von einer aus irischen Quellen entnommen Bestimmung Theodors ausführlicher die Rede sein." *Cf.* Wasserschleben 188.

For independent matter in this penitential, *vide* Schmitz I, 189 *et seqq.,* 436 and 522. On the possible influence of secular compositions, *infra,* chap. vi. For additional citations by Theodore of Justinian's *Novellae,* see the Wasserschleben edition, *passim.* For critical remarks on Wasserschleben's methods, *vide* Hörmann, in Fitting's *Mélanges* II, *passim.*

[3] *Cf.* Bright, *op. cit.,* chap. vi and *passim.*

[4] *Cf.* Wasserschleben 13. *P. Th.,* can. v, "Concerning Those That are Deceived by Heresy," would most naturally refer to the Celtic heresy which was still being suppressed in Theodore's time; *cf.* Bright, *loc. cit.* and *passim.* Severe penalties are provided by Theodore for those who have been ordained by heretics; abjurors; celebrating Easter on the wrong date; praying with a heretic; encouraging heretics; being baptised by a heretic; receiving communion from a heretic or giving

probably of great use in extirpating insubordination by means of severe penances. In this connection, however, it is to be noted that the parts of the Penitential from the Celtic "*libellus Scottorum*" were probably intended to placate Celtic opinion and thus aid in the acceptance of the Penitential and in increasing its use.

Against the arguments that this penitential directly enjoyed a lasting use in the English Church are several facts noted before, and summarized well by Haddan and Stubbs.[1] The silence of Bede and of other later historians is not conclusive as to its disuse or non-existence,[2] when taken alone; as has been shown.[3]

But[4] the appearance and apparently extensive use of later penitentials—such as those of the Theodore-cycle, and those of Bede, Egbert, and the Egbert-cycle—naturally both indicate a probable decline of the direct use of the Penitential of Theodore and a narrowing of its field by competition. Though the paucity of early sources on the Penitentials

it to one; allowing a heretic to celebrate mass in a Catholic church; persuading others to heresy; holding mass for a heretic, etc. See the text in the standard editions.

Speaking of the unorganised condition of the English Church when Theodore took charge, Cabrol considers that the Penitential of Theodore furnished elements that could be used for further organisation; *vide* Cabrol, *L'angleterre chrétienne* 137. On Theodore's general influence, the same author says: "Sur la théologie et sur la discipline, il a exercé la plus grande influence par les règles qu'ils a établies;" *vide ibid.* 26.

[1] *Vide supra,* on authorship of *P. Th.*

[2] *Op. cit.* iii, 173 *et seq.,* but minimizing too much the direct influence.

[3] See the arguments *locc. citt.,* and especially that the historians after the 12th. century lived in a time when the penitentials, strictly speaking, had been superseded by the *summae.*

[4] *Vide supra,* especially H. and S.; *cf.,* also, Watkins, *op. cit.,* 644, 656-659, for the belief that it was the chief factor in spreading private penance on the Continent.

naturally precludes too positive conclusions, it is probable that the greatest influence of the Penitential of Theodore was indirect, through borrowings from it by later English penitentials and by others of Continental origin. As will be shown more fully below, it is somewhat remarkable that a very large number of penitentials used in England and borrowing from that of Theodore were of Frankish origin.[1] Hence, it seems that much of the influence of Theodorian decisions in England during the tenth and eleventh centuries [2] was through Frankish compilations which, in some cases,[3] had themselves borrowed from Theodore's penitential.

Detailed investigation of the complicated textual relations of individual penitentials to each other is an especially important task, worthy of more intensive investigation along the lines laid down recently by Hörmann, Fournier and others.[4] As shown by the numerous citations in the edition of Wasserschleben,[5] the textual influence of the Penitential of Theodore, both direct and indirect, was very extensive. Other penitentials which borrowed most frequently from it included those of Bede and of Egbert; and

[1] E. g. pseudo-Egbert, some of the versions of pseudo-Bede, the Confessional of pseudo-Egbert, the members of the Theodore-cycle, the pseudonymous Canons of Edgar and others enumerated *infra*.

[2] See dates of those penitentials *infra*.

[3] E. g. the *Capitula Theodori* of Petit, largely from the Pseudo-Theodore; *cf. supra*, chap. i. Caution on this subject would seem superfluous if various authors had not often mistaken an indirect for a direct influence in this field; *cf.* Lea, *Auricular Confession* II, 106 and Lepicier, *Hist. of Indulgences, passim*, for examples. *Cf.*, also, the generally rejected theory of their Roman derivation by Hildenbrand in *Krit. Jahrbücher d. deutsche Rechtswissenschaft, Bd.* 17, *S.* 514 *et seq.*

[4] *Vide supra*, chap. i, for summary of critical writings.

[5] See comments *supra*, chap. i.

the later, spurious *Excarpsus Cummeani.*[1] Less strongly influenced were the *Poenitentiale XXXV Capitulorum*, the Penitential of Merseburg and others.[2] It is somewhat remarkable that the English penitentials of Bede and of Egbert apparently borrow less decisions from that of Theodore than does the spurious Continental *Excarpsus Cummeani.*[3]

SECT. 2. THE PENITENTIAL OF BEDE—EXCARPSUM . . . . . BEDANI OR POENITENTIALE BAEDAE

This penitential is to be carefully distinguished from another work called *Liber de Remediis Peccatorum,*[4] formerly regarded as the work of Bede but now known to be of different origin. The *Excarpsum Domini Bedani* [5] or *Poenitentiale Baedae* has been printed in part by Martène and Durand.[6] The whole of this penitential has been edited

[1] Not the earlier genuine Penitential of Cummean; *vide supra*, chap. i.

[2] See the Wasserschleben edition and the critical works cited *supra*, chap. i.

[3] *Supra.* For the influence of Theodore on the *Hibernensis, vide* Bury, J. B. *Life of St. Patrick* (London, etc. 1905), 235 and his references; but particularly Wasserschleben, *Irische Kanonensammlung*, (Giessen, 1874; 2d. ed., Leipzig, 1885), 247-248. On various points of connection between the Penitential of Theodore and the ritual of the Celtic Church, *vide* Bridgett, *Hist. of the Holy Eucharist*, (2 vols. London, 1881 and in 1 vol. 1908), *passim*; also, Warren, F. E., *Liturgy and Ritual of the Celtic Church*, p. 42, (Oxford, 1881). For the influence of the Penitential of Theodore on various Frankish collections of canon law, see the remarks on the MSS. and on the critical works *supra*, chap. i. For the influence of Theodore on the *Corpus Juris Canonici*, see especially the standard edition by Emil Friedberg, (2 vols., Leipzig, 1879-1881).

[4] Called by Wasserschleben "pseudo-Bede," by us "pseudo-Bede II" and by Schmitz the "Double Penitential Bede-Egbert." *Vide infra.*

[5] In some MSS. misspelled "*Excrapsum.*"

[6] Martne and Durand, *Ampl. Coll.* VII, col. 37, omitting the latter half of the work and containing a few unimportant additions from *P. Th.* or from common sources. *Cf.* H. and S. III, 326; Wasserschleben 220 and note 1; and Schmitz, *infra.*

by Wasserschleben [1] from another manuscript, also followed by Haddan and Stubbs; and, from still another manuscript, in both volumes of Schmitz' [2] edition. It is agreed by Wasserschleben, Haddan and Stubbs, and Schmitz [3] that the original work ends with canon vii or, possibly, with canon v; and, hence, that the following canons and sections on the important subject of commutations are later additions. As we have seen,[4] this vitally affects the practice of commutations, especially as these later sections are evidently of Frankish origin.

If written by the Venerable Bede [5] (d. 735), the treatise must have been composed in the early part of the eighth century. In the early manuscripts, noted above, the eighth century seems to the date of composition. There are references to a penitential of Bede [6] in the works of Regino

[1] Wasserschleben 220-230; H. and S. III, 326-334. Wasserschleben uses *Cod. Vindob.*, no. 116, *8to. saec. VIII, IX, fol.* 17-22, followed by Haddan and Stubbs, with variants from the *Andain MSS.* For other MSS., Wasserschleben, *loc. cit.* and H. and S., *loc. cit.*, both omitting those followed by Schmitz. *Cf.*, also, Hildenbrand, in *Krit. Jahrbb. f. deutsche Rechtswissenschaft, B.* 17, *S.* 521; Hänel, *Catal.*, 850; Wasserschleben 37 *et seqq.*

[2] Schmitz I, 556 *et seqq.*, after *Cod. Monac. 12673*, fol. 2, with variants from *Cod. Palat.* (Vatican) 294, fol. 87, which last forms the basis for Schmitz II, 654 *et seqq.* Schmitz here, as elsewhere, pays no attention to the work of Haddan and Stubbs.

[3] Wasserschleben 227, note 1, followed by H. and S. III, 333, note 45; *cf.* Schmitz I, *loc. cit.*, ending with canon vi, while that in Schmitz II, *loc. cit.*, ends with canon v.

[4] *Vide supra*, chap. iii, under commutations.

[5] The pre-eminence of Bede is too well-known to require further attention here. In passing, the writer would caution readers against too great dependence upon the bibliography in Chevalier's guide, which contains also, as genuine, references to much spurious matter connected with the Pseudo-Bedes.

[6] Regino, *De synodalibus causis et discipl. eccles., lib.*; in p. 1, c. 96, cited by Schmitz I, 550, *cf.* II, 647, 193; Wasserschleben 37 *et seqq.*: "Si habeat poenitentiale Romanum vel a Theodore episcopo aut a

of Prüm and in other compilations, from the ninth century down. Moreover, Wasserschleben, after Jacobson, Kunstmann, and Knust,[1] adduces as evidence for the authenticity of the Penitential of Bede the facts that one early manuscript of it expressed the name Bede as the author, while others frequently bear his name in the title. These reasons have led Wasserschleben, Jacobson, Haddan and Stubbs, Werner and various writers in the religious encyclopedias [2] to favor a probability that Bede may have been the author of this Penitential.

Against these arguments, Schmitz [3] urges that, in that time of great ignorance, the ascription of authorship merely in a title is poor evidence, in view of the various penitential works thus wrongly ascribed in that time to Bede, Theodore, Cummean, and the like.[4] Furthermore, Bede nowhere mentions it himself and, in particular, it is missing in the early list [5] of his writings. Also there is no mention of Bede's

venerabile Bede editum;" *cf.* references in Regino, Penitential, "expoenitentiale Romano Theodori episcopi et Bedae Presbyteri" and "ex Theodori episcopi vel Badae presbyteri Poenitentiale." *Reg.* I, 297, II, 246, cited by Schmitz I, 550 *et seq.*, II, 647; Wasserschleben 37-38. For citations in the later Burchard, Schmitz *locc. citt.*

[1] Wasserschleben 38, citing Jacobson, in *Allg. Lit. Z.*, (1839), *nr.* 214 *et seq.* Cf. Kunstmann 32, 41; and *contra*, Schmitz, *infra.*

[2] In general: *DCA.*, Wace and Piercey, *DCB.*, *DNB.*, Herzog-Hauck; and *cf. Ency. Brit.* Also, following Wasserschleben, the biography of Bede by K. Werner, *Beda der Ehrwürdige u. s. Zeit*, (Vienna, 1875, new ed., 1881, valuable), especially pp. 93 *et seq.*; also *cf.* Manitius, *op. cit., passim.*

[3] Schmitz I, *loc. cit.*, but especially II, 646 *et seqq.*, and excellent notes.

[4] *E. g. pseudo-Bede, Prol. Ps.-Bede*, the various *pseudo-Theodores*, and the late *Exc. Cumm., passim.*

[5] Made by Bede three years before his death; see C. Plummer, *Opera* of Bede, t. i. *Appendix, Introd.* Pt. 1: "On the Chronology of Bede's Writings", especially pp. clvi-clviii: "The Penitential," (Oxf. 1896); *cf. ibid.*, pp. clxiv, clx, on the irregular form of the Latin genitive "*Bedani*", as influenced by the weak A-S. genitive "Bedan". Also, for minimising of this argument: Albers, in *AKKR.*, LXXXI, *N. F.* (1901), 393 *et seq.* and *infra*, on *Ps.-Bede.*

penitential in that of Egbert, his pupil.[1] Finally, the meagre, sketchy nature of the compilation is unworthy of the scholarship of the great Bede. But, though denying the direct authorship of Bede, Schmitz early admitted that it might have been founded substantially upon decisions by Bede. Hence, as with many another influential penitential, some doubt remains as to its authorship.[2]

The sources for the Penitential of Bede consist of excerpts from the penitentials of Theodore,[3] Vinnian,[4] the Synod of *Lucus Victoriae*,[5] the *Ordo Romanus*,[6] the Penitential of Gildas,[7] the Synod of Brevi,[8] and the Penitential of Columban,[9] in order of frequency. The style of the Penitential of Bede is, at times, very confused and planless.[10]

As regards the influence of the Penitential of Bede, if we accept the generally assumed chronology of the above penitentials and of those about to be mentioned, it would seem that this penitential was relatively restricted in direct, textual influence.

In view of the resemblance in name, and since it was formerly considered a work of Bede and shows the possible influence of the Penitential of Bede, the next logical topic

[1] H. and S. III, 418, and Schmitz II, 647 and n. 4.

[2] See discussion of sources, *infra*; *cf.* Schmitz, *loc. cit.* Schmitz I, 572 earlier admits the substantial origin from Bede.

[3] See the editions of *P. Th.* and of *P. Bede* in Wasserschleben.

[4] *Supra; cf.* chap. i.

[5] *Supra.*

[6] *Supra,* but especially in Wasserschleben 220, 229.

[7] See the editions of Wasserschleben.

[8] *Supra.*

[9] *Vide* Wasserschleben, *passim,* and Seebass, *locc. citt., supra,* chap. i.

[10] For a view that *P. Bede* and *Ps. Bede* had great significance for Continental penance, *vide* Watkins, *op. cit., passim.* On the style of *Ps. Bede, cf.* Wasserschleben 39.

would seem to be the Penitential of pseudo-Bede. But, in two of the alleged versions of the latter, the strong influence of Egbert has been recognised by several writers.[1] Hence, the present writer will first discuss the Penitential of Egbert, following that with discussion of the so-called pseudo-Bedes and other penitentials that probably were current in England late in the period in question.

SECT. 3. THE PENITENTIAL OF EGBERT—EXCARPSUM . . . . VEL POENITENTIALE . . . . EGBERTI (EAMBERCTHI, variant), ARCHIEPISCOPI EBURACI CIVITATIS

Among several works[2] dealing with penance that were formerly ascribed to Archbishop Egbert of York, the above penitential is now generally regarded as the only one which may be ascribed to him with any great degree of probability. This was first established by the Ballerini;[3] but afterwards obscured by the careless acceptance of other works by Thorpe and others, until the latter were demonstrated to be spurious by Hilde brand, Mone, Wasserschleben, and Haddan and Stubbs.[4] The original penitential, under the general title given or similar titles,[5] has been edited by Wasserschleben from a Vienna manuscript,[6] with variants from other Continental manuscripts, an edition followed by

[1] *Vide infra,* for references on Egbert, etc.

[2] For the pseudonymous Penitential of Egbert and Confessional of Egbert, *infra,* this chapter. For an excellent list of works ascribed to Egbert: H. and S. III, 413 *et seqq.,* largely following Wasserschleben.

[3] *Vide* Wasserschleben iv, note 2 and 41-42; Mansi, *op. cit.* XII, 411.

[4] *Vide* Wasserschleben 41 *et seqq.*; H. and S. III, 414-415.

[5] On the title, *cf.* Wasserschleben 231, note 1; H. and S. III, 415-416; Schmitz I, 573 and II, 549, 661.

[6] *Cod. Vindob. jur. can.* no. 116, fol. 77-87, with variants from an Andain MSS. published incompletely by Martène and Durand, *Ampl. Coll.,* as anonymous, vol. vii, coll. 40-48. *Cf.,* also, Wasserschleben, 231, note 1, for others, and Wasserschleben 40-41, H. and S., *locc. citt.*

Haddan and Stubbs [1] with variants from an English manuscript. Schmitz [2] also has published the penitential from two variant manuscripts at Rome and elsewhere on the Continent, without sufficient attention to some earlier manuscripts printed by Martène and Durand, Wasserschleben and Haddan and Stubbs. It will thus be seen that, for the text of this penitential, the purest version, with the best variants, is that of Haddan and Stubbs; but the critical material of their edition needs to be amplified from those of Wasserschleben, and of Schmitz, and by the critical remarks in the article by Albers.

There is strong probability that the penitential described above was composed by Archbishop Egbert of York, who was consecrated in A.D. 732 and died about A. D. 766, a prelate who was the pupil of the Venerable Bede and noted for his learning and piety.[3] Reasons for ascribing this penitential to Egbert are the following: There is no reference to anything of later date; it is cited as Egbert's by Rhabanus Maurus,[4] a pupil of Alcuin; and is described as Egbert's by the tenth-century compiler of the Bodleian manuscript.[5]

[1] H. and S. III, 416-431 has variants from those of Wasserschleben and from *Bodl.*, 718, where it forms part of Book I but is described as Egbert's by the compiler; *vide* H. and S. III, 415. They include also variants from fragments of the penitential found with Egbert's *Pontifical*.

[2] Schmitz I, 573-587, from *Cod. Monac, 12, 678, fol. 6* and *Cod. Palat., 554, fol. 5*; Schmitz, vol. ii, 99, 661-74, *Cod. Palat.* (Vatican) 485, *fol.* 73, with variants from *Cod. Palat., 554, Cod. Andag.* of Martène, *Cod. Vindob.* 22-23, and *Cod. Monac.*, 13, 673. The principal MS. followed, *Cod. Palat.*, 485, is late, of the 11th century, while *Cod. Monac.*, 13, 673 is of the 10th century.

[3] On the life of Egbert of York see, particularly, Cabrol et Leclercq, *Dictionnaire*, etc., under "*Egbert*," (1921), which contains a better brief biography than is found elsewhere.

[4] *Vide* Wasserschleben 14 *et seqq.*; H. and S. III, 414.

[5] *Vide* H. and S. III, 415, 1, for description; also 414, iii.

Against these arguments and in denial of Egbert's authorship, Schmitz [1] urges that one of the manuscripts [2] is anonymous; that many works were wrongly ascribed to Egbert of York; that the somewhat planless, poor compilation is unworthy of Egbert; and that his penitential is not cited by name in later collections. These arguments are very weak in view of the reference by Rhabanus Maurus, cited above; the repeated appearance of sections of this penitential as parts of later penitentials ascribed, even if wrongly, to Egbert; the appearance of fragments from it in the authentic Pontifical [3] of Egbert; and the fact that the criterion of contents is purely arbitrary. In his first volume, Schmitz [4] admits that Egbert of York may have uttered determinations or "*Weistümer*," which were afterwards edited in much the same manner as those of Theodore and of Bede. It seems, therefore, that the present weight of probability favors the authenticity of the Penitential of Egbert.

As regards the contents of the Penitential of Egbert, its author seems to have worked much more independently than the compiler of the Penitential of Bede; but the compilation of material in that of Egbert is also somewhat crude and confused.[5] According to Wasserschleben and Haddan and Stubbs,[6] the original penitential seems to end with the fourteenth chapter; and the important chapter fifteen and following, on commutation, is a later addition from Irish

[1] Schmitz I, 565 *et seqq.*; II, 648 and *passim*; and I, 109 *et seqq.*, 119, 192, 572.

[2] *Viz.* that of the monastery of S. Hubert at Andain, cited *supra*; *cf.* H. and S. III, 414.

[3] *Ibid.* 416, marked *S.* in that ed., after Surtees ed.

[4] Schmitz I, 572.

[5] See the characterisation in Wasserschleben 41.

[6] Wasserschleben 41, 246 and n. 1, *cf.* n. 2; H. and S. III, *passim*; and *infra*.

and Frankish sources.[1] As we have seen, the foreign nature of these sections on commutations has an important bearing upon the question of the practice of these mitigations in pre-Norman England. Outside of the Prologue,[2] the greatest number of borrowings by the Penitential of Egbert are from that of Theodore, with others from that of Bede,[3] the Irish and early British penitentials,[4] the Apostolic Canons,[5] and, possibly, the early, genuine Penitential of Cummean.[6]

The direct influence of the Penitential of Egbert on the English Church was probably very powerful. The position, learning, piety, and personal influence of Egbert must have been especially influential in northern England; and the frequent use of his name affixed, wrongly or otherwise, to several other[7] influential works on canon law used in pre-Norman England sufficiently attests the considerable extent of his repute in matters concerned with penance. The textual dependence of other English penitentials upon that of Egbert was second, perhaps, only to that on Theodore's

[1] From the early Irish *De Arreis* and the Frankish so-called *Statuta S. Bonifacii; vide* Wasserschleben, *locc. citt.*, and, on the second, Hörmann, in Fitting, *Mélanges, loc. cit.*

[2] The "Prologue" cites Jerome, Augustine, Gregory the Great, Theodore and Punifius or Pinuphius; also Gregory of Nazianzen. *Vide* Wasserschleben, *locc. citt.* It also has references to the Bible.

[3] See the parallels mentioned in Wasserschleben, *passim.*

[4] Particularly *P. Vinn., Syn. Vict., P. Gild*; *vide* Wasserschleben, *locc. citt.* and under these penitentials.

[5] *Vide* Wasserschleben 236, for parallels.

[6] There are references to *P. Cumm.* and to an *Ordo Cumm.* Some of these are to the later *Ps. Cumm.*, showing Egbertian influence. But, since the discovery by Zettinger of an early, seventh century Cummean, that work may have influenced Egbert, rather than the reverse. *Vide* Wasserschleben 4 and the article by Zettinger, in *AKKR.*, cited *supra*, chap. i.

[7] *Vide supra*, also *infra* on *Conf. Ps. Egb., P. Ps. Egb.*, etc.

penitential. The most intensive borrowing from the penitentials of Bede and of Egbert is shown in the versions or separate penitentials[1] that are now known as pseudo-Bedes.

SECT. 4. THE ALBERS VERSION OF THE PSEUDO-BEDE—LIBER DE REMEDIIS PECCATORUM[2]—OR PSEUDO-BEDE I

Since the times of Spelman and of Wilkins,[3] a certain penitential has been known and published at first as that of Bede;[4] though it was sometimes considered as being by Egbert, or the later compilation of a Frankish writer.[5] The editions published by Spelman and by Wilkins, in some editions of the collected works of Bede, and by Martène and Durand, Wasserschleben and Schmitz, are now recognized as of later Frankish origin.[6] But another version has been discovered[7] by Albers which is apparently much earlier and may probably be of English origin. In our opinion this is an independent, different penitential, not another reading or version of the manuscript used by Kunstmann, Wasserschleben, and others; though it is probable that the penitential published by Albers formed the model for the later Frankish compilation. For convenience, we shall call the

[1] For two distinct classifications, *infra*. For the numerous parallels, *vide* Wasserschleben, especially under *P. Egb., Ps. Th., P. Paris, P. Floriacens., P. Mart., P. Vindob., P. Bigot., Ps. Cumm.* or *Exc. Cumm.* and its "*Ordo.*"

[2] In Albers' version or penitential prefaced by "Venerabilis Bedae presbiteri," in *AKKR*, vol. 81, p. 399.

[3] A. D. 1639 and 1737.

[4] *Vide infra*, sect. 5. For a summary of editions, vide H. and S. III, 326.

[5] *Vide infra*, sect. 5.

[6] *Infra*, sect. 5.

[7] Albers, B., in *AKKR.* vol. 81, *3te. Folge*, (1901), pp. 393-420, with excellent critical introduction and variants; though he omits comparison with editions earlier than that of Schmitz, vol. ii.

Albers version, I, and the other, II. We shall now examine the evidence relating to the Albers version, and discuss later that of II.

The text edited by Albers is taken from a manuscript compilation in the Barberini Library[1] at Rome, partly belonging to the ninth and partly to the tenth and eleventh centuries, and found with fragments of the works of Isidore of Seville, S. Jerome, and works of Bede, an anonymous work on monastic customs, letters of Pope Gregory I, and the fragment of a psalter.[2] The title is much shorter and different from that of the work published by Wasserschleben[3] and others.[4]

Albers[5] adduces excellent reasons for considering that this penitential—*De Remediis peccatorum paucississima*—was composed in the early part of the eighth century.[6] It may be objected that the portions[7] which Albers uses as evidence for this conclusion may not be connected with the

[1] *Cod. Barberin. XI, no. 120, fol. 60 r.*; *cf.* Albers, *loc. cit.*, 394 *et seqq.*. and 399 and note 1.

[2] *Ibid.* 395.

[3] Albers version has: "Venerabilis Bedae presbiteri." This is very different from the Wasserschleben-Schmitz-Spelman-Kunstmann version: "Incipit Prologus Bedae Presbyteri De Remediis Peccatorum." *Vide* Wasserschleben 248; Schmitz II, 679-680. Wasserschleben and Schmitz, *locc. citt.*, also have a rubric or title above the "Illa sancta institutio," etc., as "Excerptum De Canone Catholicorum Patrum Vel Poenitentiae Remedium Animarum," which is missing in Albers' version.

[4] *Vide infra*, sect. 5.

[5] *Vide* Albers, *loc. cit.* and *infra*, especially Albers, 396, 417. It is in two parts but Albers considers that they had the same compiler.

[6] The author of the penitential cites canons of the Lateran Synod, held under Gregory II in A. D. 721, as if he were a contemporary. Hence Albers, *loc. cit.*, 396, 417, considers that the date of composition must lie between that date and the end of the reign of Gregory II, i. e. from A. D. 721 to A. D. 731.

[7] "*Dicta isidori*" and canons of Gregory; Albers, *loc. cit.*

whole penitential. To this Albers cogently replies that it is incredible that a writer later than the time of Gregory II would add some of the canons of one of his synods with the words: "he who now reigns,"[1] in remarking the milder[2] practice of the Church then; and that the canons and the accompanying "sayings of Isidore" were called forth by a question[3] at that time for which they served as answer.

As regards the authorship of this penitential—Pseudo-Bede I—Albers[4] considers that this question is not yet ripe for decision. But he has made a valuable contribution in bringing forward this manuscript and has given good reasons for placing the penitential as an English one of the eighth century.

In spite of Albers' valuable contributions to the evidence and information on this penitential, he fails to note sufficiently that his penitential is of absolutely distinct authorship from that published by Schmitz, Wasserschleben, Kunstmann and others. There are very strong reasons for considering Penitential I, edited by Albers, as of different authorship from Penitential II, edited by Schmitz, Wasserschleben and others; instead of regarding Penitential II as a late copy of I, with interpolations and additions. The conclusion of the present writer in favor of separate authorship seems justified by many striking differences between the two penitentials in general content and order[5] of arrangement, and by some slight differences in penalties. There is considerable difference in the title.

[1] Albers, *loc. cit.*; *cf.* 418.

[2] Albers, *loc. cit.*, especially 397, 417 *et seq.*

[3] *Supra.*

[4] Albers, *loc. cit.*, 397, 398, and *passim*. On authorship, *vide*, also, *infra*, sect. 5.

[5] The most important omissions by Penitential I are of Continental matter found in Penitential II.

Penitential I omits entirely several passages found in Penitential II. These include the instructions to the bishop or priest; the "*Ordo ad dandam poenitentiam*;" the register or index of superscriptions; the ceremonies for reconciliation; important chapters on commutations; and chapters in the latter part of Penitential II on perjury and "transgressors of the episcopal ban," the last of Continental origin.

These omissions [1] are of marked consequence for the operation of penance and the question of authorship. Chapters of great consequence which deal with commutations,[2] toward the end of Penitential II, are omitted by Penitential I. Several long sections of chapters [3] in Penitential II are from Frankish synods of the ninth and tenth centuries and are omitted by Penitential I. Important passages of considerable size are found in Penitential I [4] but missing in Penitential II: e. g. provisions against infanticide; fornication of clerics and laymen; sodomy and various kinds of unnatural fornication; and breaches of the regulations on the "unclean." From the resemblance in content [5]

[1] *Vide* Wasserschleben 250-252, Albers *op. cit.* 399-491, and *passim*; Wasserschleben 252-256, Schmitz II, 680-683, for the *ordo*; Wasserschleben 257-258 and Schmitz II, 683-684, for the register.

[2] For the ceremonies of reconciliation in Penitential II: Wasserschleben 256-257 and Schmitz II, 683.

For sections in Penitential II on perjury, *vide* Wasserschleben 280-282 and Schmitz II, 700-701, the latter numbering differently.

[3] *Vide* Wasserschleben 280-282, cans. xlix, sect. 2, xxv, sects. 3-4, i, li.

For similar omissions by Albers' penitential and very great changing of order of Wasserschleben's cans. iii-xii, *vide* Albers, *op. cit.* 402-403; *cf. ibid.* 404, (9), omitting a whole section included in Wasserschleben 265, can. xiii, Schmitz II, 690.

[4] *Vide* Albers, *op. cit.* 402 and Wasserschleben 258. *Cf.*, also the very different content of Albers, *op. cit.* 414, "*De diversis causis*," as compared with Wasserschleben 27, and Schmitz II, 690-691.

[5] *Cf.* the Prologue in Albers, *loc. cit.*, 399-401; Wasserschleben 248-250; Schmitz II, 679-680, with exceptions noted *supra*. *Cf.* Albers,

of the two penitentials, with the exceptions noted, it seems likely that Penitential I formed the model for Penitential II, either directly or through an intermediary based upon I.

SECT. 5. PENITENTIAL II, THE APPARENTLY LATER PENITENTIAL EDITED BY WASSERSCHLEBEN AND OTHERS

This "*Liber de Remediis Peccatorum*" is found in a great number of early manuscripts. It has been poorly edited by Spelman and Wilkins; in the editions [1] of the collected works of Bede; [2] and by Morinus. The best editions, however, are that of Kunstmann,[3] followed by Wasserschleben;[4] and that of Schmitz,[5] with variants from manuscripts of a late date not used in other editions.

Several theories have been propounded concerning the authorship of this "Pseudo-Bede II." The belief that it was written by Bede, advanced by earlier scholars like Martène and Durand and by Morinus and in earlier editions of the works of Bede, after the superscription found

401-402, sects. 1-6 and p. 402, sects. 11-14 and 25, with Wasserschleben 258-259. *Cf.* Wasserschleben 265, can. xiii, 1, with Albers, *loc. cit.*, 11; Wasserschleben 267, can. xviii, 1, with Albers 404-5; Wasserschleben 270, can. xxvi, with Albers 405-406; Wasserschleben 271, can. xxviii, with Albers 408. Wasserschleben's canons xxi-xxxii, on theft, xxx, on auguries, xix, on drunkenness, and xliv-xlv, on commutations have many resemblances to passages in Albers 410-411, 412, 413, 415-416. There are many others.

[1] For citations, *vide* H. and S. III, 326.

[2] See the edition by Brewer, "Appendix," 32 *et seqq.*; *cf.* Wasserschleben 38, 248.

[3] Kunstmann, *Lateinische Pönitentialbücher der Angelsachsen* 142-175.

[4] Wasserschleben 248-282; and his *Beiträge zur Geschichte der vorgrätianischen Kirchenrechtsquellen* 16. It should be noted that Spelman omitted large portions that had been printed earlier; *cf.* H. and S., *loc. cit.*

[5] Schmitz II, 209, 679-701.

in some manuscripts,[1] is now rejected.[2] So, also, is the theory of the Ballerini [3] that it was written by Egbert of York. Instead of either of the above ascriptions, however, it would now seem that this penitential is a Frankish [4] compilation in its entirety.[5] It was probably based [6] upon "Pseudo-Bede I," although it possibly drew, to some extent, upon the penitentials of Bede and of Egbert directly.[7] For an entirely adequate solution of this question, however, much elaborate and detailed collation of various manuscripts still must be performed.

The sources for the above penitentials have already been indicated. According to Wasserschleben and Hildenbrand,[8] the Pseudo-Bede of their editions was a compound of the Penitentials of Bede and of Egbert. Hörmann [9] gives good reasons for concluding that the Pseudo-Bede did not form the model for the Pseudo-Theodore, but that the passages in the latter showing the influence of the penitentials of

[1] *Vide* H. and S., Wasserschleben and Schmitz, *locc. citt.*

[2] Because of a reference in it to Egbert as Archbishop, a title that he did not assume until after the death of Bede. *Vide* H. and S., *loc. cit.*; Wasserschleben 38 *et seqq.*; Kunstmann, *loc. cit. Cf. infra,* for Frankish matter interpolated in it.

[3] Cited by Wasserschleben 37 and by H. and S. III, 326.

[4] *Vide supra,* chap. iii, that subject.

[5] See the editions cited *supra.*

[6] *Vide supra,* on "pseudo-Bede I."

[7] Kunstmann, *op. cit.* 142 *et seqq.*; Wasserschleben, *Beiträge* 125 *et seqq.* and *Bussordnungen* 38 *et seqq.*, 45-46. But Schmitz II, 650 *et seqq.* and notes claims that it was written by an Iro-Scottish monk from the *Excarpsus* of Bede and that of Egbert and Schmitz therefore calls it the "Double Penitential Bede-Egbert." *Cf.* H. and S. III, 326. On the sources of Pseudo-Bede II, Wasserschleben, *loc. cit.*

[8] Wasserschleben 38 *et seqq.*, 45; Hildenbrand, K., *Untersuchungen über die germanischen Pönitentialbücher,* (Wurzburg, 1851), 39; Schmitz II, 677.

[9] Hörmann, W. von, in Fitting's *Mélanges,* II, 9, (Montpellier, 1908).

Bede and of Egbert were taken directly from those penitentials. Owing to the doubt attending the authorship of the Pseudo-Bedes I and II, it is impossible at present to determine their importance in England in their periods.[1] From the number and geographical dispersion of the manuscripts,[2] the influence of Penitential II would seem to have been extensive; but this is no safe criterion.

SECT. 6. THE CONFESSIONAL OF PSEUDO-EGBERT

Wilkins,[3] and, after him, Mansi [4] have published, as genuine, penitential material under the name of *Confessionale et Poenitentiale Ecgberti archiepiscopi Eboracensis.* The Anglo-Saxon text has been published in an improved version, with variants and a Latin translation by Thorpe,[5] who also considered it the work of Egbert of York. Textual studies of the Anglo-Saxon version have been made also, by Berbner,[6] with special relation to the language employed. As there are good reasons for considering the Confessional

[1] For the textual influence of the later Pseudo-Bede, see Wasserschlemen, 247 and *passim.* Much more very detailed research remains to be done before these matters of textual relationships of the two pseudo-Bedes to each other and to other penitentials can be clarified. In particular since the publication of Albers' penitential, detailed textual comparisons must be made before one can determine whether the borrowings noted by Wasserschleben as from Penitential II into other penitentials were actually from that source or from similar passages in Penitential I.

[2] For the list of MSS., *vide supra* and the editions of Wasserschleben and Schmitz, etc.

[3] *Op. cit.* I, 113-43; H. and S. III, 413; Wasserschleben *locc. citt.*

[4] *Vide* H. and S. *locc. citt.*; Mansi xii, 431.

[5] *Op. cit.*, 343-392. The Anglo-Saxon text follows *Cod. C. C. C. C. C.* 190, with variants from *Bodl. Jun.* 121, *saec.* X and *Bodl. Laud. F.* 17, *saec.* XI, and from a Brussels MS. of the Burgundian Library.

[6] Berbner, dissertation on *Untersuchungen zu dem altenglischen "Scriftboc,"* (Bonn, 1907), contributing little to the question of authorship.

and the Penitential separate [1] works, we shall discuss them as such.

Recent scholarship considers that the Confessional is possibly of Frankish origin, imported into England, where it was translated into Anglo-Saxon from a Latin original.[2] Manuscripts [3] of it are found in England. Wasserschleben [4] seriously doubts if Egbert were the translator, and considers it the work of a later time. But Haddan and Stubbs [5] consider that the matter is still open and that the older portions of the Confessional and the fourth book of the Penitental may have been by Egbert of York. The Confessional borrowed from the penitentials of Egbert [6] and of Theodore,[7] two late ones of Frankish [8] authorship, the second pseudo-Bede,[9] and Cummean's [10] penitential.

[1] *Vide infra.*

[2] It is prefaced by "Hic incipiunt hujus libri capitula, quem librum confessionalem vocamus. Haec capitula Ecgbertus, archiepiscopus Eboracensis vertit ex latino in anglicanum." Wasserschleben 300, note 1; *cf.* A-S. in Thorpe, *loc. cit.*

[3] *Vide supra.*

[4] Wasserschleben 42.

[5] H. and S. III, 414, *cf.* 415 nos. i and iii respectively.

[6] We follow the Wasserschleben edition of *Conf. Ps. Egb.*; *cf.* cans. xi-xii, xiv, sect. 3, with *P. Egb.*, cans. x, 4, v, 9-10, 20-21, iii-iv, in Wasserschleben 306-307.

[7] Supplying the majority of borrowings: *cf. Conf. Ps. Egb.*, cans. viii-ix, xiii-xiv, xvi-xxxiii, xxxv-xli. There are forty-one chapters in the whole of the Confessional.

[8] *The Penitential of Rheims,* ii, 3 *cf.* i; *cf. Conf. Ps. Egb.*, can. ii. *Cf.*, also, *Conf. Ps. Egb.*, can. v, with the *Bigotian Penitential,* ii, 1, sects. 6-7, and 4, in Wasserschleben 305. Compare these penitentials in Wasserschleben 497 *et seqq.* and 441 *et seqq.* But, assuming the Confessional as, possibly, Egbert's, the borrowing might just as well have been the other way, as these Frankish penitentials are later than Egbert.

[9] *Cf. supra,* that head.

[10] Haddan and Stubbs, *loc. cit.*, suggest that they are probably from the earlier, genuine Cummean of the seventh century, But, to determine this, it is now necessary to collate, with passages in the Confessional, others in the MS. of the earlier Cummean recently published by Zettinger, *loc. cit., supra,* chap. i.

The influence of the Confessional might possibly depend somewhat upon the question of whether or not it was written by Egbert. If genuine, it would probably have an extensive use, especially considering that the vernacular language employed greatly increased its utility. Whether or not it was written by Egbert, the fact of its being in the vernacular would greatly increase its spread in a period when there was so great ignorance among the clergy.

SECT. 7. THE PENITENTIAL OF PSEUDO-EGBERT

This penitential has been published by Wilkins; [1] Mansi; [2] Thorpe; [3] Wasserschleben, after the Latin translation of Thorpe; and, in part, by Mone.[4] Often found with the Confessional [5] of pseudo-Egbert, it is considered as of separate authorship. The penitential proper consists of four books in the Anglo-Saxon tongue, purporting to be a translation from a Latin original by Egbert of York. But the authenticity of this ascription is now generally [6] re-

[1] Wilkins *op. cit.* I, 113-143, in parallel columns—Latin and Anglo-Saxon—from *MS. C.C.C.C., L., XII, now 190,* which has the Confessional also. *Cf.* Wasserschleben 43-44; H. and S. III, 413 *et seqq.* In the late *MS. C.C.C.C., 265, (formerly K, 2)*, the Penitential of pseudo-Egbert is also found, together with other works wrongly ascribed to Egbert, the Pseudo-Theodore and some Irish canons; *vide* M. Bateson, in *EHR.*, (1895), 320 *et seqq.* Miss Bateson regards this compilation as written in an English hand of the tenth or eleventh century.

[2] Mansi *op. cit.* XII, 441 *et seqq.*

[3] *Op. cit.* 362 *et seqq.*, with better notes on the Anglo-Saxon than Wilkins. *Cf.*, also Berbner, *op. cit., passim.*

[4] Wasserschleben 318 *et seqq.*, 43-44; Mone *op. cit.* 501.

[5] *Cf. supra,* on the Confessional.

[6] By Wasserschleben, Haddan and Stubbs, Mone, and the writers in *DNB.* and *DCA.*, etc., *locc. citt. Cf. supra,* on the Penitential of Egbert.

jected, with the possible exception of Book[1] IV. Books I to III, inclusive,[2] are generally recognized as a translation into Anglo-Saxon of the third, fourth and fifth books of the ninth century Penitential of Halitgar,[3] in paraphrase. According to Haddan and Stubbs,[4] Book IV of this compilation may possibly be by Egbert of York. Its chapters are largely founded upon the Penitential of pseudo-Cummean;[5] that of Theodore;[6] some slight influence of Pseudo-Bede[7] II; and, possibly, some borrowing from the pseudonymous Roman Penitential.[8]

Owing to the very great thoroughness of its many chapters, and its convenient rendering into Anglo-Saxon, the Penitential of pseudo-Egbert probably exercised considerable influence in the English Church. Borrowing from it is seen in a passage in the work of a canonist[9] of the early Norman period; and the influence of Book IV upon the pseudonymous Canons of Edgar has been shown by

[1] *Vide infra.*

[2] Except can. i of Book II. *Vide* Wasserschleben 322 and H. and S., *loc. cit.*

[3] *Cf.*, on Halitgar, *supra*, chap. i. In support of this argument, H. and S., *loc. cit.*, after Wasserschleben 43 *et seqq.*, emphasize the more correct citation of learned authors by Halitgar. On the relations between the Pseudo-Egbert and the Penitential of Halitgar, *cf.*, also, the discussion by M. Bateson in *EHR.*, (1895), 320-326.

[4] H. and S. III, 414-415; *cf. supra*, on the *Confessional.*

[5] See the Wasserschleben edition, for parallels.

[6] *Vide* Wasserschleben 345 *et seqq.*

[7] *Vide* Wasserschleben 341.

[8] See the Wasserschleben edition, *passim.*

[9] The anonymous compiler of the spurious *Leges Henrici Primi; vide* Liebermann, *Gesetze* II, *s. v.* "*Pönitentialbücher,*" p. 622, after Bateson, in *Jahresber. Gesch.-Wissenschaft*, (1905, 1907), III, 96. On the Confessional see, also, other works cited by Schmitz I, 570-571 and Wasserschleben 42.

Mone.[1] According to Wasserschleben and Mone,[2] the composition of the Penitential falls between that of Halitgar and the second half of the tenth century. Schmitz[3] believes that the Penitential exerted great influence on the Continent.

SECT. 8. THE PSEUDONYMOUS CANONES EADGARI OR CANONS OF EDGAR

This compilation consists of extracts from various works bearing on penance, prefaced by certain canons purporting to be passed under King Edgar, in the second half of the tenth century. Though accepted by Thorpe[4] and, apparently, by Mansi[5] and by Wasserschleben,[6] the authenticity of these canons is rejected by Liebermann,[7] the best authority on the Anglo-Saxon Laws, who ascribes them to an independent canonist[8] of the tenth century. They are especially noteworthy for very lax provisions of commutations, through substitutes, for powerful men.[9]

The pseudonymous penitential canons erroneously ascribed to Egbert, to Theodore and to Edgar, respectively, are also interesting because of the influence[10] exerted by them on some of the late Anglo-Saxon Laws.

[1] Mone, *Quellen und Forschungen*, (1844), I, 501 *et seqq.*, edits *Lib. iv* more completely.

[2] Wasserschleben 44.

[3] Schmitz I, 176; *cf. ibid.* 570.

[4] Thorpe, *op. cit.* 395 *et seqq.*

[5] Mansi, *op. cit.* XVIII, 514 *et seqq.* *Cf.* Thorpe, *op. cit.* 402 *et seqq.*; Mone, *op. cit.* 529 *et seqq.*

[6] Wasserschleben 49-50.

[7] Liebermann, *Gesetze I*, "*Einleitung,*" *passim* and II, *s. v.* "*Pönitenz*" and "*Eadgari,*" no. 11.

[8] *Vide supra*; possibly eleventh century.

[9] *Vide supra*, chap. iii, under commutations.

[10] *Vide* Liebermann, *locc. citt., supra*; also *ibid.* II, *s. v.* "*Kanones*" and "*Pönitentialbücher.*" E. g. *Can. Ps.-Edg.* influenced *II Cn.* and *Northu.*

CHAPTER V

The Anglo-Saxon Laws and Their Provisions on Penance

SECT. 1. INTRODUCTORY

Several reasons have led the present writer to discuss somewhat fully the interaction of the Penitentials with the Anglo-Saxon Laws. Among the first has been the scant treatment which this subject has received in the literature on the Penitentials and on the Germanic laws. The absence of detailed discussion of this important subject is all the more remarkable because of the potent influence of religion on the primitive laws of Germanic peoples; the intermingling of secular and ecclesiastical jurisdiction in pre-Norman England; the numerous laws of the Anglo-Saxons requiring or enforcing ecclesiastical penalties for secular crimes; and the consequent functions of the Anglo-Saxon Laws and the Penitentials as mutually assisting and explaining the work of each other.

In the following chapter these powerful factors in the cooperation of penitentials and secular laws will be described. It will be necessary to supplement this sketch with descriptions of the practical influence of this cooperation. Hence there will also be incorporated brief descriptions of the operation and effect of the secular laws; of the provisions of the Penitentials which strengthened the enforcement of the secular laws; and of similar phases of mutual influence.

SECT. 2. RELIGION AND LAW AMONG THE PRIMITIVE GERMANIC PEOPLES

To understand and appreciate fully the mutual interaction of the Penitentials and the secular laws during the period studied, it is very necessary to reckon with the influence of pagan religious sanctions, ceremonies, and officials upon primitive Germanic Law. Among primitive peoples, religion occupied a place of great importance, exerting a profound influence upon practically all other institutions, which are very often combined with some religious feature. Among phases of law, for example, we find that the concepts of crime, the ceremonies of legal procedure, penalties, and enforcement were influenced by religious taboo, ideas of magic,[1] and of "*mana*",[2] veneration of ancestors,[3] and fear of anthropomorphic deities;[4] possibly, also, by ideas of animism. In particular, the power of pagan priests over discipline and law provided their Christian successors with potent weapons to aid them in introducing and enforcing their system of ecclesiastical penances and other penalties.

[1] *Vide* Jenks, *Law and Politics in the Middle Ages*, (London, 1898; 2d. ed., 1913), chap. viii; Brunner, *Deutsche Rechtsgeschichte*, (2 vols., Leipzig, 1887-1892; 2d. ed., 1906, of which vol. i is used), I, 150, 184-185, 245 *et seqq.*, 216, 236, 248. This work is cited hereafter as "Brunner." *Cf.* a general article by Mauss, in *RHR.*, XXXV, 49 *et seqq.*

[2] On "*mana*", see the article by Mauss, *loc. cit., supra.* For examples of the belief that punitive power resided in the safeguards of the oath and in the ordeal, *infra*, under those heads.

[3] Especially in the system of feud and of compensation; *vide infra*, those heads.

[4] E. g. as shown in the appeals to their vengeance upon perjurers and in appeals to the judgment of God in ordeals and in trial by combat; *vide infra*, under oaths, ordeals, etc.

For the belief that "*Meinwerke*"—e. g. treachery, murder of kin, desecration of graves, etc.—exposed the committor to the direct vengeance of the gods, *vide* Brunner I, 248. *Cf. ibid., passim*, on the death-penalty as a sacrifice to the gods.

Pagan priests announced the assembly-peace; exercised penal justice in the army; supervised the ritual of compurgation and of ordeals and the execution of criminals; declared and aided in enforcing outlawry; and probably exercised a strong influence over customs and legislation.[1]

SECT. 3. THE INTERMINGLING OF SECULAR AND ECCLESIASTICAL JURISDICTION

After the conversion of the Germanic peoples to Christianity, this close connection and mutual influence of religion and law was inherited and, at first, became even more detailed than before. In pre-Norman England[2] and the Frankish Empire, the closeness of this connection is to be seen clearly in the intermingling of secular and ecclesiastical jurisdiction; and, even more significant for our thesis, in the passing of secular[4] laws that required penance for crimes.

The intermingling of secular and ecclesiastical jurisdiction[5] during the pre-Norman period was shown in the subjects for legislation, in the courts of law, in procedure and in other important respects. Even in the so-called "secular" laws passed by the pre-Norman sovereigns and *witan,* ecclesiastical enactments formed a considerable part of the whole. In some cases[1] bishops probably dictated or strongly influenced the whole content of individual codes; in all cases they constituted a part of the *witan* and, in that capacity, aided in formulating and interpreting the laws.

At least until the growth of private jurisdictions, there were no distinct ecclesiastical courts separate from the secular ones; though there may have been "a system of church judicature with properly designated judges, and a recognised, though not well defined area of subject-matter in persons and things."[2] The judicial matters of the Church were apparently transacted in the ordinary *gemots* of the hundred and of the shire. Even the public procedure in ecclesiastical cases was probably customary and primitive, "and differed in nothing materially from the lay procedure."[3]

[1] *Vide* Brunner I, 184, 248-249. For similar powers of the Celtic Druids, *cf.* Seebohm, *Tribal Custom* 115-116.

[2] This mutual influence did not cease with the Norman Conquest but became less thereafter, with the separation of the bishop's court from that of the sheriff. Even then royal assistance was promised for executing sentences of the bishop. *Vide* Stubbs, in *Select Essays in Anglo-American Legal History,* (3 vols., Boston, 1907-1909, cited hereafter as "*Select Essays*") I, 256.

[3] *Vide infra,* sect. 6.

[4] *Vide infra,* sect. 6.

[5] On the general intermingling of ecclesiastical subjects with secular ones in the Anglo-Saxon Laws, see, particularly Liebermann, *op. cit.* II, *s. v.* "*Kirchenstaatsrecht,*" "*Geistliches Gericht,*" etc. Also *cf.* Cutts, *Parish Priests,* etc., chap. v and p. 39, mostly without references to the sources; Bright, *Early English Church* 102-103, 274 *et seqq.,* 333 *et seqq.,* 410, 427, 30, 35-36, 411.

The term "synod" which is frequently used in the prologues to the Anglo-Saxon Laws, connotes, for the time and place, either an ecclesiastical or a secular council. For a similar intermingling among Celtic peoples, see the Irish synods in Wasserschleben 135-145 and Seebohm, *Tribal Custom,* chap. iv.

[1] Probably with Wihtred and, to a large extent, with Alfred, Ine, Ethelred and Cnut, as well as others. Particular sovereigns emphasing ecclesiastical enactments were Wihtred, Alfred, Ethelred and Cnut. *Vide* Pollock, F., and Maitland, F. W., *History of English Law before . . . . Edward I,* (2 vols., Cambridge 1895; 2d. ed. used, 1898, to be cited by its usual abbreviation—"P. and M."), I, 35, note 5; Hodgkin, *Hist. of England* 339, 363-366, 410; Makower, *Constitutional Hist. of the Church of England,* (English translation, London, 1895), sect. 2, but particularly pp. 7 *et seqq.* and sect. 59, pp. 352 *et seqq.*; Liebermann *op. cit.* II, *s. v.* "*Kirchenstaat,*" "*Kanones,*" "*Jurist.*"

[2] For remarks on the scarcity of source-materials on ecclesiastical procedure before the Normans, *vide* Stubbs, in *Select Essays* I, 255. For the persons and things under ecclesiastical jurisdiction, *vide* Liebermann, *op. cit.* II, *s. v.* "*Bischof,*" "*Gericht,*" "*Geistliche,*" etc.

[3] On the ecclesiastical use of compurgation and ordeals, *infra,* sect. 5; also, *Wih.* 18, *II Cn.,* 44, *VIII Ethr.* 19.

The potent influence exerted upon the law by Church and priesthood was manifested in several other respects.[1] The Church substituted Christian *formulae* and ritual for the heathen practices previously connected with methods of procedure;[2] Christian priests supervised their administration;[3] and Christian relics and other sacred objects took the place of pagan ring, sword, or altar; while the Christian God was invoked for his blessing or curse.[4] The part of Christian priests in controlling legal procedure was so important that laws were passed regulating it.[5] Finally, Christian excommunication and other deprivations of church-privilege, with penance, supplanted the curse of pagan priest and deity upon the obstinate breaker of the peace.[6]

[1] For further details on the attitude and influence of the Church upon procedure, etc., *infra*, sects. 3, 5.

[2] *Vide infra*, this chapter, under oaths. On the practices of fasting and confession before ordeals and on compurgation in churches, etc., also see Makower, *op. cit.* 59, 7, 9; 69, 20.

[3] *Infra*, this chapter, under ordeals. See, in general: Lea, *Superstition*, etc., 276, 409, 413-414, 415, 417; Brunner, *op. cit.* I, 261 *et seqq.*; Liebermann, *op. cit.* II, *s. v.* "*Eid*," "*Ordal*," "*Geistliche*," etc.

[4] *Vide* Brunner, *op. cit.* I, 258, note 34, 257, 261 *et seqq.*, 248 *et seqq.*, 266.

[5] E. g. punishing a priest for misconduct in the ordeal, *NPL.*, 39; *cf. Can. Ps. Edg.* 62, requiring the attendance of a priest at ordeals, (late, possibly Frankish). Also *cf.* Lea, *op. cit.*, Pt. III, chap. xviii; Pollock, in *Select Essays* I, 92; Holdsworth W. S., *History of English Law*, (3 vols., London, 1903-1909, cited hereafter by its usual abbreviation "Holdsworth"), II, 12.

[6] Originally the appeal was to the pagan god of water or of fire: Pollock, in *op. cit.* 93; Brunner, *op. cit.* I, 262. For general lists of passages in the Anglo-Saxon Laws that were specifically influenced by the Church, etc., *vide* Liebermann, *op. cit.* II, *s. v.* "*Kirchenstaatsrecht*," "*Jurist*," "*Moral*," "*Poenitentialbücher*," etc; also *infra*, chap. vi.

SECT. 4. SECULAR REQUIREMENT OF ECCLESIASTICAL PENALTIES

Turning to the discussion of ecclesiastical penalties, we find a host of secular enactments requiring penance, excommunication, simple exclusion from church, deprivation of consecrated burial, and degradation of clerics, either singly or as combined penalties,[1] or combined with secular penalties. Particularly important for the influence of penance is the law of Alfred concerning sanctuary or church-peace: "It is also church-peace: if any man seek a church for any of those offences which had not been before revealed, and shall there *confess himself in God's name, be it half-forgiven.*" [2]

According to Liebermann, penance was required by the secular laws for (1) ecclesiastical offences, (2) semi-ecclesiastical offences, and (3) purely secular crimes. Among the first are offences like work on holidays,[3] breaking fast, neglect or delay in baptising children, unchastity of clerics,[4] marriage within the prohibited degrees,[5] and incest,[6] adultery

[1] On the following, see, particularly, Liebermann, *op. cit.* II, *s. v.* "*Pönitenz*", "*Beichte*", "*Kirchenstaatsrecht*", "*Kanones*", all of which cannot be commended too highly. Also see the articles by Hanna, in *Cath. Ency.* XI, 632 *et seqq.* and by Thurston, in *The Tablet*, (London, Feb. and Mar., 1905), with comments on these articles *infra*, the "General Bibliography." *Cf.* the required possession of a penitential by a priest, *supra*, chap. i, sect. 1.

[2] *Vide Alf.* 5, sect. 2, according to Liebermann's edition. For materials on church-peace or sanctuary, *vide* Liebermann, *op. cit.* II, *s. v.* "*Frieden*," "*Kirchenfriede*," etc. "Half-forgiven" probably means commutation of part of the *money-bot*.

[3] See the subject in Liebermann, *op.* cit. II, *passim*.

[4] *Vide supra.*

[5] *NPL.* 10, 1 prescribes spiritual penance for neglect to baptise a child; *vide* Liebermann, *op. cit.* II, 619. But other laws for this provide for both penance and fine.

[6] *Vide infra*, this chapter, under courts.

of the man, fornication, marriage with a nun, abduction of a widow, defiling of a nun, the breaking of vows by monks, paganism, magic, and other similar crimes or offences.[1] Other offences were regarded as semi-ecclesiastical:[2] e. g. breach of pledge,[3] perjury, violation of church-peace, homicide by a cleric,[4] theft and perjury of clerics,[5] insubordination of clerics against a bishop, the slaying of clerics or of monks, secret murder,[6] and, to some extent, homicide in general.

To make the alliance between Church and State even closer, there were all-inclusive enactments by secular law, decreeing penance for sins in general and for violation of

[1] For distinctions, *vide* Liebermann, *op. cit.* II, *loc cit.*

[2] Probably those which came under the joint jurisdiction of bishop and King, especially those that infringed upon the public peace and also had a certain amount of impiety attached. Liebermann, *loc. cit.*, no. 2a, gives numerous examples of the close interweaving of the two jurisdictions in the laws of Edward and Guthrum, Athelstan, Edmund, Ethelred and Cnut.

[3] Or "*wed-bryce*"—a breach of the pledge given by the accused to guarantee his undergoing proof. As the accompanying oath was safeguarded by religious sanctions and sworn on sacred objects, etc., breaking it was regarded as impiety. *Vide infra*, this chapter, under the oath.

[4] Makower, *op. cit.*, sect. 59, p. 391, remarks that, though there is strictly a distinction between the power to impose penance, ("*potestas ordinis*"), and the judicial power, ("*potestas jurisdictionis*"), yet, "in Anglo-Saxon times, they apparently overlapped each other and, to outward observation, the imposition of penance appeared to imply a punitive power resident in the Church and supplementing the punitive power of the State."

[5] Or of property belonging to a cleric.

[6] "*In occulto*"—sometimes the Anglo-Saxon "*Morth*," usually associated with the idea of magic; *vide* Liebermann, *op. cit.* II, *s. v.* "*Mord*," "*Zauber*."

Church canons or of secular law.[1] The terms[2] of these laws make certain that they directly referred to eclesiastical penance, rather than to money compensation to the Church, though this is sometimes mentioned in addition and is found in other sections. General, all-inclusive enactments requiring the performance of ecclesiastical penance for secular crimes are found in many prologues to pre-Norman laws, both in the Anglo-Saxon and Latin versions.[3] The treaty between Edward the Elder and Guthrum states in the prologue: "And they established secular penal laws also, for that they knew that they could not otherwise guard against (much crime), *and many people would not otherwise subject themselves to religious penances, as they should*

[1] For the general history of penance in Great Britain, *supra*, chaps. ii and iii. Lea, *Auricular Confession* II, 106, 112, erroneously limits the English examples to the late *II Cn.* 45 or *Cn. Sec.* 45, which he uses from Thorpe's version; but Lea cites numerous Continental examples.

Parallel laws of the Frankish monarchs have been noted by Lea, *loc. cit.*; Funk, in *Klex.* II, *s. v.* "*Busse*;" Alzog, *Church Hist.* II, 165; but particularly by Gieseler, *Church Hist.* II, 107, 54 and note 25 and *passim*. None of the above are sufficiently full.

[2] Liebermann, *op. cit.* II, *s. v.* "*Pönitenz*", "*Beicht*." Among the definite terms used for ecclesiastical penance in the Anglo-Saxon Laws, according to Liebermann, occur: "*bot*", with or without the addition of "*for Gode*", "*with God*"; "*godbot*"; "(*ge*)*betan*"; "*doedbetan*", (*godcund*)." For confession, etc.—"*scrift*"; "(*ge*)*scrifan*"; "*scrift-boc*", etc. The latter referred to a penitential; *vide supra*, chap. i, sect. 1.

Liebermann distinguishes between two meanings of "*bot*" when used in an ecclesiastical sense—compensation to clerics for injuries, loss, etc., and another meaning including ecclesiastical penalties, particularly penance.

[3] See, in general, Liebermann, *op. cit.* II, *s. v.* "*Pönitenz*", "*Beicht*", "*Kirchenstaatsrecht*", "*Kanones*", "*Bischof*", "*Geistliches Gericht*", etc., for this and the following. Liebermann expresses this view very forcefully when he says: "Der Staat macht sich allgemein zum zwangsvollstrecker kirchlicher Befehle, wo der Laie diesen nicht freiwillig gehorcht." It even punished protectors of excommunicated foes of the Church with confiscation and death. *Vide* Liebermann, *op. cit.* II, *s. v.* "*Kirchenstaatsrecht*," nr. 20, which gives many instances from the A-S. Laws.

do; and they established a secular compensation jointly for Christ and the king, wherever anyone should not wish to subject himself lawfully to churchly penance according to the bishop's command (or direction)".

It is to be noted, also, that this treaty formed the basis for much of the laws of Cnut,[1] and probably continued in operation from the date of its inception till shortly before the Norman Conquest, save that the distinctions between English and Dane became gradually modified. When this is compared with the passage from Alfred regarding church-peace,[2] it will be clearly seen that the laws insisting upon penance for crimes are becoming more general[3] and inclusive. In the laws of Ethelred, coming much later, there were decreed several all-inclusive enactments enforcing the requirement of penance for crimes:[4] e. g. "And he who henceforth, in any way, violates genuine *laws of God or man*, let him expiate it zealously, according as is proper, *as well through ecclesiastical penance, as through secular punishment.*"[5] This emphasis upon the necessity for penance continued into the laws of Cnut;[6] but the passages cited above sufficiently demonstrate the general thesis.[7]

Special decrees or laws demanding penance for specific crimes are found in England at an earlier date than the general, all-inclusive laws. Though omitted by the codes

[1] *Vide EGu., Prol.*, in Liebermann, *op. cit.* For the lasting importance of this treaty, *vide ibid.*, "*Einleitung*" and in his third volume.

[2] Cited *supra*, from *Alf.* 5, 4.

[3] For later examples of general enactments, *vide* Liebermann, *op. cit.* II, *loc. cit.*; also *ibid.*, under "*Moral*," and "*Homiletisches.*"

[4] *Vide VI Ethr.*, 1=*X*, 1, in Liebermann, *op. cit.* I, 236-237.

[5] Cited from *VI Ethr.* 50; *vide* Liebermann, *op. cit.* I, 259. The italics are the present writer's.

[6] *Vide* Liebermann, *op. cit.* II, *s. v.* "*Pönitenz*" for passages.

[7] For additional passages on secular penalties enforcing penance, *vide* Liebermann, *op. cit.* II, *s. v.* "*Kanones*," no. 4a; "*Kirchenstaatscrecht*", no. 24, h. and nos. 20 *et seqq.*

of Ethelbert and of Hlothaere and Eadric, they appear in Kent as early as Wihtred, who provides excommunication, with penance, for fornication and also gives special oath-privileges to a communicant.[1] In Wessex, there is no direct mention of penance for crimes in the earliest secular laws of Ine, though his code provides special oath-privileges for communicants.[2] With the laws of Alfred we meet, for the first time, any attempt to extend the secular requirement of penance for crime, his code specifically mentioning it for breach of church-peace, feuds, and perjury.[3] The Treaty between Edward the Elder and the Danish chief Guthrum, besides the passage cited in the earlier paragraph, has special provisions requiring penance for incest and for certain crimes by, or injuries to, clerics.[4] The laws of Athelstan which were passed at Greatlea, provided particularly for penance for perjury;[5] and those of Edmund,[6] for slaying.

Ethelred embodies some provisions of the Treaty of Edward and Guthrum which prescribe penance and adds several general enactments requiring it for homicide by a

[1] *Wih.* 3, 4. The laws of Wihtred have attracted most attention from modern writers on religious legislation among the Anglo-Saxons; *vide* Bright, Hunt, Cutts and others, *opp. citt., passim.* But they are proportionately small in scope, as compared with religious provisions in later codes, especially in that of Alfred and those of the ninth and tenth centuries. The latter were, doubtless, influenced by and a part of the religious reforms of the ninth and tenth centuries. *Vide supra*, chap. iv and *infra*, under individual codes.

[2] *Vide Ine* 15, 1 and 19.

[3] *Alf.* 1, 2—*re* "*wed-bryce;*" 5, 4—*re* Church-peace and feuds; and 42, 2—*re feuds*—limited but important subjects.

[4] *EGu.* 3—ordained person fight or steal, or perjure or fornicate; *EGu.* 4—for incest; *EGu.* 12—for injuries to clerics.

[5] *II Ath.*, (at Greatlea), 25-26—perjury, in particular.

[6] *II Edm.* 4. The translation by Liebermann, *op. cit.* I, 189, differs from that in Thorpe, *op. cit.* 106.

cleric, breach of church-peace, and abandoning a cloister.[1] Cnut repeats passages on penance from the laws of Alfred and of Ethelred and from the Treaty of Edward and Guthrum, and adds some provisions of his own.[2] The late *Hadbot,*[3] (*ca.* A.D. 1030-1050), regarding expiation for injuries to clerics, prescribes penance as well as the payment of money compensations. In addition to the passages cited above, there are numerous passages in the Anglo-Saxon Laws that require confession[4] or that employ ecclesiastical penalties[5] other than penance. It is also to be noted that, where later laws do not specifically repeat earlier requirements of penance, this does not imply that these earlier laws had fallen into disuse; for the early English laws often left much implied or unstated.

As has been demonstrated,[5] penitential discipline included

[1] *VIII Ethr.* 26-27, after *EGu.* 3—theft by clerics; *vide* Liebermann, *op. cit.* II, 619. *Cf. II Cn.*, 4a, *VI Ethr.*, 7—for magic, after *EGu.*, 11, in Liebermann, *op. cit.* I, 135; *cf. op. cit.* II, 619. *VIII Ethr.*, 26, in Liebermann, *op. cit.* I, 266, which he regards as influenced by *P. Ps. Egb.*, can. iv, 1—for homicide by a cleric; *cf. Legg. Hn. I*, 73, 1. For abandoning a cloister—*V Ethr.*, 5=*VI*, 3a, in Liebermann, *op. cit.* 1, 239 and II, 619. For breaking church-peace, besides compensation to the Church, the King and the injured person, *cf.* Liebermann, *op. cit.* II, 619.

[2] *Cnut's Law of ca. 1020*, c. 14, repeats *Alf.* 1, 2, on "*Wed-bryce*," *vide* Liebermann, *op. cit.* II, 619. Magic is penanced in *II Cn.*, 4a, 1 after *EGu.*, 11. For theft by a cleric—*I Edm.*, 6 and *I Cn.*, 5, 3 after *EGu.*, 3. On church-peace see, also, *VIII* Ethr. 3=*I Cn.* 2, 3, in Liebermann, *op. cit., passim.* On homicide by a cleric see, also, *II Cn.* 41-42=*VIII Ethr.* 26, in Liebermann, *op. cit.* I, 266.

[3] For penances in *Hadbot, vide* Liebermann, *op. cit.* I, 466 *et seqq.*

[4] Laws mentioning or requiring confession in an ecclesiastical sense include: *Alf.* 5, 4; *EGu.* 5=*II Cn.* 44=*Hn. I*, 11, 9 and 66, 4; *VI Ethr.* 27=*I Cn.* 1a; *VIII Ethr.* 1, 1 and 2, 2, 1=*VIII Ethr.*, a, 2; *I Cn.* 23, (*cf. P. Egb.*, can. i, 2, 9, 10 and *P. Ps. Egb.*, can. xl; *Can Ps. Edg.*, can. lxv; *Can. Aelfr.*, xxxi.)

[5] *Vide supra,* chaps. ii, iii.

severe disabilities or humiliations of the penitent, besides the performance of strictly penitential practices. It connoted not only fasting, vigils, pilgrimages, prayers and the like, but also excommunication, deprivation of all church rites and of the right of consecrated burial[1] in some cases. Some public penitential acts of humiliation were sometimes provided, though the extent of the latter phase is somewhat in question for England.

Some of these penalties are explicitly mentioned in the secular laws of pre-Norman England and were apparently resorted to in extreme cases. Excommunication for crime appears specifically as early as Wihtred. The crimes thus punished are extended in number thereafter, especially during the reform movement of the tenth century, in the laws of Ethelred;[2] and deprivation of consecrated burial is mentioned specifically by Athelstan,[3] as punishment for obstinancy in perjury. Nor were these penalties so weak as at present. The ban of excommunication which was often used in cases of outlawry, as well as in those above-mentioned, was greatly feared because of the terrible curses which the customary form heaped upon each member of the culprit's body and upon all persons[4] who aided him.

They carried additional social force in that the excom-

[1] *Vide supra,* chaps. ii, iii, on the possibility of reconciliation of the dying.

[2] *Vide* Liebermann *op. cit.* II, *s. v.* "*Exkommunikation,*" etc., and especially the laws of Ethelred and of Cnut, in the passages on enforcement of penance cited *supra, q. v.* for others.

[3] *Vide II Ath.* 26; *Edm. Eccl.* 2; *V Ethr.* 29, *VI*, 36, *IX*, 41; *II Cn.* 67, for excommunication; *cf. supra* chap. iii.

[4] For the *formulae* for excommunication used in early England, *vide* Liebermann *op. cit.* I, 438, and his texts of these. The *formulae* of church-bann curse the parts of the body and the pseudonymous *Canons of Edgar* confess the sins of these; *cf.* the latter in Thorpe, *Ancient Laws,* etc., 404.

municated person was *ipso facto* debarred from the royal court, with an attendant loss of social enjoyment, political advancement and power.[1] In addition, the sentence usually involved general social ostracism and sometimes physical danger. The strictly secular penalties for refusal to perform penance or to obey other ecclesiastical penalties included deprivation of the right to have penance commuted, or required additional *bot* to the Church and to the king.[2]

In summary, the foregoing discussion has shown clearly that, with increasing thoroughness and severity, the pre-Norman kings constantly enforced penitential practices as supplementary aids to the suppression of disorder and crime. In doing so, they naturally did not replace with their own the authority over penance already vested in bishop and priest;[3] but, undoubtedly, they strongly reinforced the actual performance of penance by the threat of additional secular penalty, social ostracism, and personal disfavor at court. Pre-Norman England was very slowly converted, suffered several relapses of portions of the population into paganism, and may, at first, have offered some resistance to penance. As will be demonstrated,[4] the general conditions in England, during the period in question, represented a fierce conflict

[1] *Vide* Liebermann *op. cit.* II, *s. v.* "*Exkommunikation;*" *cf.* Bright *Early English Church,* 205 and note 3, 208, 443, 459. For the particularly severe treatment of the excommunicated by the Carolingian kings, *cf.* an excellent brief discussion by Moeller, *Church History* II, 115.

[2] See the references cited in the notes, *supra.* In particular Alfred 5, 4 and *EGu. Prol.* contained commutations for penance. *Cf.* also, *supra,* the references on the laws of various early English kings requiring penance; and Liebermann *op. cit.* II, *s. v.* "*Ponitenz.*"

[3] The State made the Church's demands upon the people its own matter, to be strictly enforced. *Vide* Liebermann, *op. cit.* II, *s. v.* "*Kirchenstaatsrecht,*" no. 22 and no. 24, d. *et seqq.;* "*Kirche;*" "*Geistliche;*" "*Bischof;*" "*Pönitenz;*" "*Kirchenfriede.*"

[4] *Vide infra,* sect. 5.

between the powers of order and disorder, of crime and public peace. During that struggle both secular and ecclesiastical discipline cooperated in the process of socialising and civilising; and, in that cooperation, the effect of penitential measures was undoubtedly greater than has hitherto been supposed.

SECT. 5. THE OPERATION OF THE ANGLO-SAXON LAWS.

It has now been shown that there was close connection between the secular legal system of the Anglo-Saxons and the system of penance, through the secular laws requiring penance. It will be necessary now to describe briefly the operation of the Anglo-Saxon legal system, in order to observe in what respects and to what extent these laws needed assistance from other sources outside the secular government.

It is generally known that the application of Anglo-Saxon law was influenced by several extra-legal sanctions common to primitive peoples and found developed among other Germanic tribes.[1] Custom and taboo were reverenced as though filled with a mysterious, punitive power. In the absence of developed political machinery, social ties of kinship and of class continued to direct a large part of custom, even down to the Norman Conquest.[2] A great part of the

[1] On Germanic legal institutions: *infra,* "General Bibliography," especially the works of Brunner, Jenks, Maurer, etc.; also the references in this chapter, *passim.*

[2] Jenks, on "Teutonic Law," in *Select Essays* I, 62 and in *Law and Politics,* chap. i, especially pp. 20 *et seqq.* Examples are the blood-feud, kin-solidarity, etc.; *vide infra.* On the declarative and consolidative nature of the Anglo-Saxon Laws: *Alf., Prol.* 49, 8-9; Pollock, in *Select Essays* I, 97-98; P. and M. I, 1 *et seqq.*; Brunner, *ERQ.,* 4-5, and in *Select Essays* II, 8, note 1; *contra,* Stubbs, *Constitutional Hist.* I, 194-195. On the time, place and transmission of the Anglo-Saxon Laws: essays by Brunner and by Maitland in *Select Essays;* Brunner, *ERQ., passim*; Liebermann, *op. cit.* I, "*Einleitung*" and vol. iii. On social discrimination, *infra.*

law was based on unwritten custom, leaving some gaps in our sources of information. These gaps must be partly filled from other documents, among which the Penitentials are important. From another view-point, the strength of custom would naturally affect attempts at innovation by the Penitentials.

Much of the enforcement of tribal or even of national customary laws regarding crime, was left to the methods of self-help or of kin-help.[1] By this, the plaintiff must personally summon his opponent to court, demand a security that he appear for proof, and sometimes even execute the sentence of the court upon the defendant. In this procedure and in the actual trial, both plaintiff and defendant might be supported[2] by their respective kindreds. In the earlier period the State actually discouraged appeals to its power; and, even when the king was willing to aid the execution of justice, "the efficiency of these powers varied according to the king's means and capacity for exercising them."[3] There was a strange lack of executive power, and the Anglo-Saxon courts had not gone far beyond a stage in which jurisdiction was "merely voluntary, derived, not from the authority of the State, but from the consent of the parties."[4]

[1] *Vide* Pollock, in *Select Essays* I, 95, for an able contrast of the modern legal system with the crude Anglo-Saxon methods; also Brunner, *op. cit., s. v. "Selbsthilfe." Cf. Alf.* 42, on feuds; and P. and M. I, 25.

[2] On extra process of law: Brunner, *op. cit.* I, 251-252, but particularly 254-255 and its excellent notes. A limited form of self-help persisted down to the time of Cnut; *cf.* Laughlin, in *Essays in A-S. Law,* (Boston, 1876), 185-186 and Pollock, in *Select Essays* I, 95-96. *Cf.* a late example under Henry II, in *Select Essays* I, 119-120.

[3] Pollock, in *Select Essays* I, 92.

[4] Pollock, in *op. cit.* I, 95; *cf.* P. and M. I, 49 *et seqq.* For assistance by the king: Brunner, *op. cit.* I, 122, 118-119, 260; Stubbs, *Constitutional Hist.* 82; Lea, *Superstition,* etc., 47; also *infra,* on kin-responsibility, compurgation, compensation-payments, etc. On self-help see, also, Liebermann, *op. cit.* II, *s. v. "Selbsthilfe", "Rechtsweigerung", "Notwehr",* etc.

The responsibility and power of the kindred are seen in the fact that the compurgators for the trial were usually chosen from among them;[1] his kin probably aided the plaintiff in demanding the fulfillment of sentence;[2] sometimes avenged his death by the blood-feud or received the compensation money from the murderer or his kin;[3] went surety for an accused kinsman; and stood responsible for his conduct.[4] The method of kin-responsibility in policing is especially seen in the exercise of the power of *mund.* This resided in the male head of the clan or, sometimes, in a lord, and not only meant protection, but also disciplinary power, even of life and death, at times.[5] To some extent this may have acted as a deterrent from crime; but we shall see, later,[6] that the system was open to grave abuse from the inherent probabilities of clan prejudice and combination to prevent conviction and the enforcement of penalties.

The most injurious phase of self-help or kin-help was the practice of the blood-feud. In spite of later attempts to limit the number of persons exposed to it and the right to carry on feud, and in spite of the growing development of the king's peace, extreme cases of the practice of the blood-feud continued in England even as late as after the Norman

[1] *Vide supra,* also *infra,* on procedure; Brunner, *op. cit.* I, 123 and its many references; Stubbs, *Constitutional Hist.* I, 82, after *Northu.* 51, *Hn.* 64, 4 and others. *Cf.* Lea, *locc. citt.*

[2] *Vide* Lea, *Superstition,* etc. 47; Brunner, *op. cit.* I, 260; Young in *Essays in A-S. Law* 122. But *cf. infra,* under procedure.

[3] *Vide infra,* under blood-feud and compensations.

[4] For further matter, *infra,* this chapter, on the payment of compensations.

[5] On the nature and extent of the kindred: Brunner, *op. cit.* I, sect. 29, p. 327 and *passim*; Liebermann, *op. cit.* II, *s. v. "Magen," "Sippe,"* etc.

On *mund:* Liebermann, *op. cit.* II, *s. v. "Mund", "Schutz", "Friede", "Friedensbruch",* etc; Shadwick, *Anglo-Saxon Institutions* 151-153.

[6] *Vide infra,* on enforcement, etc.

Conquest. In addition, private vengeance was allowed in certain restricted cases, though it must be authorised by previous permission of the court or afterwards justified before[1] it. As a result of the foregoing, the legal permission of feuds and of private vengeance, even if limited, tended towards private warfare and rule by force. That this natural tendency towards lawlessness and violence continually reasserted itself is shown by the complaints in the prologues to the laws of some of the strongest kings, e. g. Edward the Elder, Athelstan and others.[2]

In penalties it is well-known that the Anglo-Saxon Laws represented, as a whole, a transition state, with slight tendencies towards true punishments for crimes against the State. The predominant penalties were money compensations to the injured or to his kin.[3] In specially heinous cases, severer penalties of confiscation or forfeiture, death or slavery, mutilation, imprisonment as a temporary measure, exile and outlawry were used as means of enforcement. In the main, however, these were extraordinary measures, apparently used but seldom.[1]

If sufficiently severe and properly enforced, the compensation system was an improvement over the blood-feud, which it supplanted historically. Its chief defect, among the Anglo-Saxons, lay in the comparatively low value placed upon human life. Then, too, it probably played into the hands of the rich and powerful clans, while it may have often sent into convict-slavery the poor man unable to pay compensation.[2] Judging by the history of the fining system today, the system of compensations as penalties for crimes probably increased crime as compared with the effect under true punishments, especially among the rich. Nor do we need to rely upon modern analogies, for the prologues to the Laws are marked by complaints against "manifold fightings" and denial of or resistance to justice.[3] Offenders

[1]On vengeance and the blood-feud: Liebermann, *op. cit*, II, *s. v.* "*Fehde*", "*Blutrache*", "*Selbsthilfe*", etc.; Brunner *op. cit.* I, 221-222, 119, 227 *et seqq.* 197, 148, 257, sects. 12-13; P. and M. I, 237 *et seqq.*; Jenks, *Law and Politics*, 101-102, 197, 225-227, 257-258 (excellent). For its persistence: Hodgkin, *Hist. of England*, 304; P. and M. I, 31; Pollock, in *Select Essays* I, 94-96; Brunner *op. cit.* I, 163; Jenks, *op. cit.*, 102.

[2]*Vide infra*, this chapter, under compensations and enforcement.

[3]In general see: P. and M. I, 26, 48-49; Pollock in *Select Essays* I, 102; Liebermann *op. cit.* II, *s. v.* "*Strafen*" and under individual crimes; and particularly Wilda, *Strafrecht der Germanen*, (Halle, 1842), 169-184; also, Brunner, *op. cit.* I, 220 *et seqq.* sect. 22, pp. 386-387, 99 note 42, 216, 184-185.

For "botless," inexpiable crimes which, however, gradually diminished in numbers: Liebermann *op. cit.* II, *s. v.* "*Busslos*," "*Bot*," "*Todschuldig*," etc.; Jenks *op. cit.*, 104-105; Laughlin in *Essays in A-S Law*, 273-274; and Wilda, *locc. citt.*

For the names of the penalties: Liebermann, *op. cit.* II, *s. v.* "*Strafen*;" Brunner, *op. cit. passim.*

[1]P. and M. I, 126, remark that the only punishments, applicable in a proper sense to freemen, were money fines and death, the latter when redemption by a money fine was not allowed.

Death or convict-slavery was prescribed for paganism, a thief caught in the act and cognizance of theft, *vide. Wih.* 26 and *Ine* 7, 1 and 6; sometimes as an alternative. See also Liebermann *op. cit.* II, *s. v.* "*Strafe*," "*Todesstrafe*," "*Vermögenseinziehung*."

On mutilation; *Ine* 18—frequent theft by a freeman; Alf. 32, 6, with alternative of redemption. For perjury, (rarely), *infra.* Exile was rarely used: *III Ath.* 6, 1; *Egu.* 11, as a last resort for magicians, soothsayers, perjurers, "morthworkers;" sometimes also for obstinate contempt of court—*V Ath., Prol.*

On outlawry as a means of enforcement, *infra,* this chapter, under the latter heads; also P. and M. I, 27.

Severe penalties were prescribed for counterfeiting, especially by Cnut; see that head in Liebermann *op. cit.* II.

[2]Slavery was the penalty for nonpayment of compensations; *vide* Liebermann *op. cit. II, s. v.* "*Strafknecht*", "*Verknechtung.*"

[3]*Vide I Edm., II Edm., III Edg., IV Edg., V Ethr.*, for complaints of lawlessness. *Cf.*, also, P. and M. I, 27-28, after *II Ath.* 3; *cf. cap.* 17, *IV Ath.* 3, and *VI Ath.* 8; also Pollock, in Select Essays I, 94. For penalties against those who were "frequently accused" or "of no credit," *vide* P. and M. *loc. cit.*, after *III Edg.* 7 and *II Cn.* 33, 22.

were frequently maintained by great men in defiance of law. Athelstan, victor of Brunanburh, had to make ordinances against lawlessness of this kind,, while weaker princes left it without remedy, because they were powerless to amend it. Great difficulty was experienced in obtaining specific evidence and in compelling accused and suspected persons to submit themselves to justice and to pay their fines if convicted. This may serve to explain the severe penalties in the later laws against those who were "frequently accused" or "of no credit."

The overwhelming majority of cases were tried in the local courts of the county and the hundred.[1] For ordinary judicial affairs the hundred-court was the judicial unit. At some time during the later Anglo-Saxon period, royal authority added private jurisdictions—manorial and ecclesiastical. These grew until they had become numerous and powerful[2] in the century just preceding the Norman conquest. In these private courts the procedure was like that of the hundred-court and the jurisdiction was also controlled by the shire.[3] Justice under private jurisdiction may or

[1] For courts: P. and M. I, 14 *et seqq.* and *passim*; Liebermann *op. cit.* II, *s. v.* "*Gericht*", "*Verfahren*", "*Hundred*", "*Mark*", etc.; Brunner *op. cit.* I, 251-256 and *s. v.* "*Ding*", "*Rechtsgang*", *Verfahren*", etc.; Holdsworth, *Hist. of English Law* I, 3-9 and *passim*.

On the jurisdiction of the *witan*: P. and M. I, 48; the cases in the appendix to *Essays in A-S. Law; Alf.* 4; *II Cn.* 64.

On the hundred and shire courts also see P. and M. I, 42; Pollock, in *Select Essays* I, 90; Hodgkin, *Hist. of England,* 428-429; and Stubbs *Constitutional History* I, 102 *et seqq.*

[2] For summaries of the extended controversies over the rise of private jurisdictions, *vide* P. and M. I, 19-20; Pollock, in *Select Essays* I, 91; Vinogradoff, *English Society in the Eleventh Century,* (Oxford, 1908), 90-140; Maitland, *Domesday Book,* etc., especially "Essay II," sect. 5, pp. 318 *et seqq.*; and under "*sac*" and "*soc*" in Liebermann *op. cit.* II. Also the criticisms of Maitland's views by Round, in *EHR.*, XV, 293 *et seqq.*

[3] Adams, in *Essays in A-S. Law,* 54. Note qualifications as to territorial jurisdiction, particularly just before the Norman Conquest, in

may not have been worse or better than in the local courts; the question is indeterminate because of the lack of reliable statistics. In the earlier period, before the growth of private jurisdictions,[1] so far as ecclesiastical jurisdiction was concerned, the bishop sat with the shire-reeve in the hundred-court and there judged cases coming within ecclesiastical jurisdiction.[2]

The methods of procedure at trials placed the processes attending conviction in the hands of powerful clans and were permeated with class discrimination. Important parts of the procedure probably fostered perjury also. These conclusions are based upon investigation of the connections between the various stages of precedure, the methods of self-help or kin-help, and the social classes and organisation of the pre-Norman period. In particular, a very close connection may be traced between the Penitentials [3] and the system of compurgation.

Among the three forms of proof [4] used, compurgation applied to the greater number of cases, even of heinous crimes; unless the accused were notoriously an habitual criminal or

Maitland *Domesday Book,* etc., 116 *et seqq.* 52, 80-107, 310; and by Hodgkin, *op. cit.* 440.

[1] *Vide supra.*

[2] Heavy penalties were imposed for fighting in his presence—*Alf.* 15; he was paid *bot* for *borh-bryce—Ine* 45; was given control over the woman taken in incest or adultery—*EGu.* 4; over ecclesiastics and strangers—*EGu.* 12; sanctuary for thieves—*IV Ath.* 6; sanctuary in general—*VII Ethr.* 5; over penance, with the priest—*II Ath.* 26 and others mentioned in Liebermann, *op. cit.* II, 618 and under "*Bischof,*" "*Geistliches Gericht*", "*Geistliche,*" etc.

He was present at the *gemot—II Edg.* 5; and the Church claimed for him even a large share of the directing of secular justice. *Vide* P. and M. I, 16-17; Stubbs, *Constitutional Hist.* I, 263; *Select Charters* 75.

[3] *Vide infra,* chap. vi, under the penances for perjury.

[4] Oaths, ordeals, documents; the latter very rarely. The court fixed the form of proof but compurgation was more frequent, particularly in the earlier period; *vide infra.*

otherwise unworthy of oath.[1] Compurgators, to aid the accused in swearing himself innocent of the crime, were usually chosen from the vicinity, class or kin of the accused,[2] in numbers that varied according to his rank [3] and the alleged crime. In view of the strong kin solidarity characteristic of the period,[4] it is extremely probable that there was organised perjury among powerful kin to protect their accused kinsmen; in fact the later attempts to have the compurgators chosen from among candidates previously chosen by the magistrate [5] strongly point that way. As the clearing-oath of a noble was worth several times that of a single freeman, it would seem that there was a serious defect in the much-vaunted Germanic liberties. Court procedure made it many times easier for the noble to escape conviction than for the common freeman.[6] Against a possible objection that there

[1] On compurgation: Liebermann, *op. cit.* II, *s. v.* "*Eideshilfe,*" etc.; Brunner, *op. cit.* I, 257 *et seqq.*, 131 *et seqq.*, 151, note 7, 205, 123, 267, 344, note 15.

[2] *H. and E.* 5; *II Ath.* 9; *Wiht.* 19, 21; *EGu.* 3; *VIII Ethr.* 19-20; Brunner, *op. cit.* I, 123, 260; *Northu.* 51, b.; Young, in *Essays in A-S. Law* 144; Seebohm, *Tribal Custom* 413-414, (excellent).

Chosen at first by the accused but later by the magistrate, a change apparently due to abuse of the earlier system. *Vide* Lea, *op. cit.* 47; Laughlin, in *op. cit.* 298, after *I Aethr.* 2, (ed. Schmitz); K. Maurer, in *Kritishe Uberschau* V, 199.

[3] *Vide infra,* on social discrimination; also in Liebermann, *op. cit.* II, under individual ranks, for oaths.

[4] *Vide supra,* this chapter, under kin-help.

[5] For references, *vide supra,* notes.

Compurgation was used in most cases at the discretion of the court; *vide* Lea, *op. cit.* 51-52. The oath was not to individual facts but partook of the principal's oath of denial: Lea, *op. cit.* 33-34; Laughlin, in *Essays in A-S. Law* 186, 188; Brunner, *op. cit.* II, 375; Pollock, in *Select Essays* I, 38-39; P. and M. I, 37. When compurgation was allowed, it was final; *vide* Pollock, *op. cit.* I, 98.

[6] *Vide* Liebermann, *op. cit.* II, *s. v.* "*Eid*", "*Eideshelfer,*" etc. and under the names of the various ranks; Lea, *op. cit.* 21 *et seqq.*; Brunner, *op. cit.* I, 387. In each class, the number of compurgators might vary, also, according to the crime.

could not have been much organised perjury because the kin would not defend a bad case, may be urged the above facts which are based upon reforms and objections contemporary to the laws. This class discrimination is seen also in the compensations for injuries and death.[1]

The closest connection between the secular laws and the Church, however, is to be seen in the well-known religious safeguards [2] of the oath. The oath was to be sworn in forms and upon material accessories [3] which were regarded as being endued with religious power. Sworn thus the oath may have operated as an ordeal, on account of the popular belief that misfortune would follow perjury and especially because of the direct supernatural power then credited to relics.[4] Thus the deadly sins of sacrilege, impiety and blasphemy were added to that of perjury. Hence the punishment of this offence was naturally assigned to Church courts and to penance. But the efficacy of this safeguard against perjury, even in that superstitious age, must have

[1] *Vide* Liebermann, *op. cit.* II, under "*Wergeld*" and the names for the various ranks. *Contra,* for some offences, some laws prescribed heavier penalties for criminals of higher rank; *vide Alf.* 18, *II Cn.* 53, *Wih.* 5, *II Ath.* 17, *EGu.* 3.

[2] On these safeguards: Brunner, *op. cit.* I, 257; Pollock, in *Select Essays* I, 92; Lea, *op. cit.* 58 *et seqq.*, 370 *et seqq.*; Liebermann, *op. cit.* II, *s. v.* "*Eid*", "*Eidesform*", "*Eidesformeln.*"

[3] In churches, on altars, or relics, or on the hands of one ordained; or on a cross, or the name of God, or the Gospel; *vide* Liebermann, *ut supra.* For further details, especially as connected with penance, *infra,* chap. vi, under perjury. An oath of peace might be sworn on weapons; or, for other purposes in the case of the Northmen in England, on holy oathrings; or on the hand of the reeve, (one citation); or, in a limited case, on the hand of a kinsman who is not a compurgator; or, for foreigners, sometimes on a stone or by a false god.

[4] For such traditions centering around, e. g., the black cross of Abingdon, *vide* Lea, *op. cit.* 374 and note 3; also other examples in Du Cange, *s. v.* "*Sacramentum,*" and in Brunner, *op. cit.* I, 261, note 44.

varied a great deal, depending upon the relative suggestibility of the individual or his moral callousness.

To offset the danger of purjury or of false witness being committed and to punish them when detected, a few of the secular[1] laws provided severe secular penalties. The laws of Ine penalise perjury in an oath to ownership of property which, it is alleged, has been stolen, by a penalty double the combined value of the fine and the article; while another passage penalises false witness before a bishop by a fine of one-hundred twenty shillings. The treaty of Edward and Guthrum punishes a man in orders who forswears either by the *wergild* or by fine, according to the case, besides penance. A passage in the laws of Cnut penalises perjury committed on relics by the loss of the hand or by one-half the *wergild*. Perjurers who will not perform penance are to be visited with exile, according to several laws. While other laws make the perjurer unworthy of future oath, thus practically punishing him, in the event of his future trial, by demanding the ordeal as proof. Evidently, then, Brunner is mistaken in limiting secular punishment for perjury to the time of Cnut forward.

Secular laws also ordered the stringent execution of ecclesiastical penalties for perjury. By far the chief burden of preventing and punishing perjury and false witness, however, was put upon the laws and discipline of the Church. This discipline operated chiefly through penance and the Penitentials, a subject that will be discussed later.[2] In spite, however, of the Germanic scorn for perjury and of the secular government's stand against it, there is strong prob-

[1] *Vide* Liebermann, *op. cit.* II, *s. v.* "*Meineid;*" *cf.* Brunner, *op. cit.* II, 68 and note 2, 682 and note 34; *Ine* 35, 1, and 13; *II Cn.* 36; *EGu.* 11; *II Cn.* 6; *I Edw.* 3; and others in Lieberman, *loc. cit.*

[2] *Vide infra,* chap. vi.

ability that the secular forces[1] that fostered it were greater, Perjury was, apparently very prevalent[2] in that period and what was accomplished against it must be done largely through ecclesiastical discipline.

In certain cases, however, it is well known that there were appeals to the "Judgment of God" in ordeals.[3] Of various kinds, these were used after failure in compurgation;[4] or, without compurgation, in cases especially under suspicion;[5] in specially designated crimes; for the kinless, strangers, those previously perjured or frequently accused; and for those of notorious ill-repute. The principal forms of ordeals are well-known.[6] Like the oath, ordeals were

[1] On the Germanic scorn for perjury: Brunner, *op. cit. I,* 212, 123, 260-261, 257; II, 681 and sect. 45, which needs qualifying.

On the meaning of perjury among the Anglo-Saxons, *vide* Pollock, in *Select Essays* I, 92 and *passim.*

Forces fostering it were the system of kin-solidarity, shown in the choice of kinsmen as compurgators; the insistence on fixed numbers of oath-helpers taking oath, in many cases, to matters outside their knowledge; the class discrimination which aided the possibility of perjury among the upper classes. *Vide supra,* on compurgation.

[2] Favoring the great prevalence of perjury then are: Lea, *Superstition,* etc. 31-32; K. Maurer, in *Kritische Uberschau* V, 199; Pike, *History of Crime,* etc. I, 55. For evidence of the growing lack of confidence in compurgation: Lea, *op. cit.,* chap. vii, pp. 67 *et seqq.,* 61 *et seqq.,* 371 *et seqq.,* 85, 268; Laughlin, in *Essays in A-S. Law* 299 *et seqq.*

[3] On ordeals, see: the works of Lea and of Jenks, *supra, passim*; Jenks, essay on "Teutonic Law" in *Select Essays,* I, *passim*; Federico Patetta, *Le ordalie,* (Turin, 1890); P. and M. I, 39; Brunner, *op. cit.* I, 176, 182 *et seqq.,* 261 *et seqq.,* II, 400-491, 409, 413, 499, 394, 377, 371 *et seqq.*; Liebermann, *op. cit.* II, *s. v.* "*Ordal*"; Liebermann, "*Kesselfang bei den Westsachsen in siebenten Jahrhunbert*", in *Sitzungsberichte d. Akad. der Wissenschaften zu. Berlin,* (1896), II, 829-835, which revises all previous works on the origin of the ordeal in England.

[4] *Vide supra,* this chapter, under compurgation; and Liebermann, *Gesetze* II, *s. v.* "*Ordal*", "*Eideshelfer.*"

[5] *Vide* Liebermann, *op. cit.* II *s. v.* "*Ordal*" for the following.

[6] Lea, *op. cit.* 277 *et seqq.,* 303 *et seqq.,* chap. viii of his "Part III,"

preceded and attended by religious ritual and *formulae,* intended to overawe the guilty into confession or to make him commit mistakes in the ritual of the ordeal. Any faltering or formal mistakes were regarded as evidence of guilt and severely punished.[1]

Owing to the fearful physical injury attendant upon the hot-water and hot-iron ordeals, and the danger in others,[2] it is difficult to imagine how they could have failed in convicting. But, in the opinion of an eminent authority:[3] "The results were probably less remote from rough justice than we should expect, and it seems that the proportion of acquittals was larger. Certainly people generally believed to be guilty did often escape, how far accidentally or otherwise, we can only conjecture." Even after allowing for the contemporary belief in miraculous intervention and for the efficacy of ordeals as torture to extort confession, the inefficacy of ordeals to secure convictions was probably greater than one would anticipate.[4] There was evidently danger of collusion to protect the accused by the priest, or by the friends or relatives of the accused, by various methods.[5] But, whatever the causes, convictions in the

339 *et seqq.,* chap. ix and *passim; supra,* notes, for other works on ordeals, *passim.* Various requirements of the ordeals and peculiarities of the liturgy of the ordeal in England are noted by Liebermann, *op. cit.* II, *s. v.* "*Ordal*" and under the individual kinds of ordeals.

[1] For insistence on formalism, *vide* Liebermann, *op. cit.* II, *s. v.* "*Ordal,*" nos. 16, 31 and 32.

[2] For the power of religion in the ordeal: Lea, *locc. citt.*; Brunner, *op. cit.* I, 262 and *passim*; Pollock, in *Select Essays* I, 92; Laughlin, in *Essays in A-S. Law* 300 *et seqq.* For class discrimination in the ordeals, *vide* Lea, *op. cit.* 318, 58, 278, 287.

[3] Pollock, in *op. cit.* I, 92, with excellent references; and Lea, *op. cit.* 406.

[4] For the earlier confidence in the ordeals, *vide* Lea, *op. cit.*, "Part III," chap. xvi.

[5] Lea, *op. cit.* 404-406 and note 4. For a law against its abuse, *vide NPL.* 39; *cf.* Maitland, *Select Pleas in the Manorial Courts,* (London, 1889), I, 3-5, 63 and *passim.*

ordeals, especially in the common cold-water ordeal, were extremely rare and many guilty persons must have escaped. The inefficiency of ordeals to insure conviction is especially shown in the growing lack of confidence[1] in them in all quarters during the time when they were still in use.

SECT. 6. ENFORCEMENT IN THE ANGLO-SAXON LAWS

Possibly the weakest phase of the Anglo-Saxon Laws was the general lack of extensive, powerful machinery for enforcing court-decisions by direct, official coercion, when necessary. In connection with these weaknesses in enforcement and those in penalties, previously noted, the Penitentials played a most important part which, until now, has been much under-rated and misunderstood.[2] Fully to appreciate the aid given by the penitential discipline in these respects it will, therefore, first be necessary to discuss briefly the methods of enforcement used by the Anglo-Saxon Laws.

For enforcing payment of compositions to the injured or to his kin, after a court award, private[3] distress or seizure was used, in case payment was not voluntary. The se-

[1] Lea, *loc. cit.; cf. ibid.* 402, chiefly from Continental cources. *Cf.,* also, the belief in the efficacy of magic in ordeals, Lea, *op. cit.* 407. For the opposition of the Church to ordeals, *vide* Lea, *op. cit.* 421 *et seqq.*

Liebermann, however, remarks: "Doch gelang tatsächlich das Ordal manchmal, sogar das Eisenordal und Feuerordal;" *vide* Liebermann, *op. cit.* II, *s. v.* "*Ordal,*" nos. 10 and 6. But he remarks also that they appeared much more perilous than the proof by oath and that many fled, in spite of the severe penalties against evading ordeals; *vide loc. cit.,* nos. 17, a, b, c.

[2] The Penitentials were particularly influential in providing what were really penalties for disobedience to the sentences of the secular courts, when defendants refused to pay compensation or otherwise denied justice; *vide infra,* chap. vi.

[3] For compositions and other penalties, *vide supra.* On the methods of self-help, kin-help, the blood-feud, etc., *supra,* sect. 5. But *cf.,* also, the rise of the king's peace, *infra.*

curity which had been given by the defendant or his kin as a pledge that he would submit to proof might be seized; or other property of the defendant might be attached by the plaintiff as a pledge that the judgment would be paid. In default of payment by the accused or by his kin[1] or in case his property was insufficient, his person might be seized as a convict-slave or "*wite-theow*". In any case, judgment was executed[2] personally by the plaintiff or by his kin; and, in extreme cases of refusal of the defendant to do justice, "he, (the plaintiff), might take the law into his own hands, in fact, wage war upon his obstinate opponent."

This method of self-help or kin-help was liable to several grave dangers. Where justified legally, it might and likely did lead to violence and confusion, especially in view of the facility for executing vengeance and carrying on feud afforded by these primitive laws. Nor could it readily[3] be carried out successfully against the strong or influential in-

[1] *Vide* Liebermann, *op. cit.* II, *s. v.* "*Pfändung*", "*Pfand*", "*Beschlagnahme*", "*Vermögenseinziehung*", "*Rechtsweigerung*", "*Selbsthilfe*", "*Burgschaft*," etc.; Pollock, in *Select Essays* I, 95-96; Jenks, *op. cit.* 103-104, 259-261; Brunner, *op. cit., passim*, which has excellent bibliography. For cases where the king's officials might (rarely) be called, *infra*.

[2] Liebermann, *op. cit.* II, *s. v.* "*Verknechtung*", "*Strafknecht*", etc.; P. and M. I, 33, 35; Pollock, in *Select Essays* I, 98; Hodgkin, *Hist. of* England 225-226, 114-116, 303. Pollock and Maitland, *loc. cit.*, regard slavery as the working out of a debt, but Hodgkin, *op. cit.* 225, considers that the children were also slaves, even if born after convict-slavery was incurred by the parent. Against the latter may be cited a law of Edgar, at Exeter, (*ca.* A.D. 924), *cap.* 6, apparently limiting penal servitude in proportion to the crime or "as belongs thereto;" *cf.* Lieberman, *locc. citt.* By a law of Ine, (*cap.* 7, 1), the whole family, save for children under ten years, might be enslaved for complicity in theft committed by the head of the household; but *cf. II Cn.* 76, for restraints placed on greedy bailiffs. The quotation is from Pollock, in *op. cit.* I, 96.

[3] *Vide supra*, sect. 5.

dividual or clan. Usually, even as late as Cnut,[1] the officials of the king were to be called in only as a last resort in the execution of right. The danger of abuse in unfounded claims was distinctly recognised and guarded against by several laws.[2]

As a last resort, analogous to the taking of vengeance by the individual, there was the declaration of outlawry. The obstinate resister of the law was put outside of its protection,[3] being declared an enemy to the whole folk,[4] until again "inlawed," or brought into the peace.[5] The outlaw was to be hunted down and slain, a fugitive,[6] on whose head a price was sometimes set, exposed, without hope of redress or of protection.[7] According to late sources, he might also forfeit his property, though his kin sometimes had the privilege of redeeming it under certain conditions.[8]

[1] *Vide supra*, this chapter, under self-help, kin-help and procedure; Pollock, in *Select Essays* I, 95; P. and M. I, 47-48. At a somewhat later date, we find the acceptance and payment of compositions enforced by putting the obligation under the special sanction of the king's peace; *vide II Edm.* and *Be Wergilde* 4, in Liebermann's edition.

[2] *Vide* Jenks, *op. cit.* 260.

[3] On outlawry: Brunner, *op. cit., s. v.* "*Friedlosigkeit*," "*Acht*," sect. 23, pp. 232 *et seqq.*; Liebermann, *op. cit.* II, *s. v.* "*Friedlos*," "*Fluchtling*," "*Acht*," etc.; and *supra*, this chapter, under vengeance.

[4] *Vide* Liebermann, *locc citt.* and his "*Wörterbuch*."

[5] For Anglo-Saxon and Danish cognates to the English "outlaw," *vide* Liebermann, *locc. citt.; cf.* Brunner, *op. cit.* I, 232 *et seqq.*

[6] Or "*flyma*"; *vide* Liebermann, *locc. citt.* and Laughlin, in *Essays in A-S. Law* 271 and note 11, after Schmid.

On the degrees of outlawry, *vide* Brunner, *op. cit.* I, 243 *et seqq.* and notes 55-56.

[7] An outlaw may be killed without compensation and the killer acts in the interests of all; *vide* Brunner, *op. cit.* I, 232 and note 5.

For other severe provisions, *vide* Laughlin, *loc. cit*; Brunner, *loc. cit.;* Liebermann, *op. cit.* II, *s. v.* "*Friedlos*," "*Beherbergen*," "*Herberge*," etc. On the execution of outlawry, *vide* Brunner, *op. cit.* I, 232-233, 236 *et seqq.*

[8] Brunner, *op. cit.* I, 235 *et seqq.* and notes; *cf.* Liebermann, *op. cit.* II, *s. v.* "*Friedlos*," "*Acht*," etc.

In theory, and for individuals whose kin were of ordinary or of inferior strength, it would seem that the penalty of outlawry would have sufficed to effect a submission of the obstinate or their escape from the country.[1] In the known absence [2] of judicial or executive machinery or procedure for officially executing court sentences, it would seem rather that the execution of a sentence of outlawry would also be left, in general, to the individual or kin. Hence, the natural process of executing outlawry would be the feud. Powerful kindred, therefore, would be able to secure their rights from the weaker, or might naturally and successfully back up an outlaw relative in resisting the execution of outlawry. With the growing power [3] of feudal lords in the later pre-Norman period in particular, offenders were actually so maintained by great men, in open defiance of common right; and, it is probable that weaker princes left it without remedy, because powerless to amend it as to over-powerful clans;[4] while even energetic, otherwise powerful kings,[5] were unable to stamp it out completely.

[1] Laughlin and Brunner, *locc. citt.*, emphasise the theoretical effect of outlawry, without due allowance for the power of great men and of powerful kin in supporting one who resists justice; *cf. supra.*

[2] *Vide supra*, under self-help, kin-help, blood-feud, weakness of executive power, etc.

[3] For the weakening of the royal power by the increasing power of great lords, *vide* Stubbs, *Constitutional Hist.* I, 208 *et seqq.*

[4] *Vide* P. and M. I, 27-28; *II Ath.* 3, 17; *VI Ath.* 8. Pollock, in *Select Essays* I, 94-95, remarks that, in cases where the king's power might be invoked, "it is obvious that the process was barely distinguishable from that of combatting open rebellion." On the feebleness of the king's executive power see, also, P. and M. I, 14-15 and 27; Hodgkin, *Hist. of England* 428-429. For the difficulties in Alfred's time, *vide* Stubbs, *Constitutional Hist.* I, 183 and note 3. The king might send out commissioners to inquire how justice was done, though he could not interfere with actual decisions; *vide* Pollock, in *Select Essays* I, 91-92.

[5] E. g. Alfred, Edward the Elder, Athelstan, Edgar and Cnut. See, in general, the prologues to their laws in Liebermann's edition; Hodgkin, *op.cit.* 437-438, 336 *et seqq.*, 299-305, 425 and *passim*; Holdsworth, *op. cit.* II, 5-6; Stubbs, *op. cit.* I, 198 *et seqq.*, 201, 179-180; P. and M. I, 21; and the earlier, relatively weak kings described in Chadwick, *Anglo-Saxon Institutions* chap. viii.

It is, to be sure, well recognised that individuals, particularly among the later kings,[1] materially extended the royal power politically and territorially; and especially that there was a gradual development of the idea of the king's peace, particularly among the later pre-Norman kings.[2] But this development was very gradual, as the earlier conceptions of the king's peace were very limited in extent, and the fuller extensions came late.[3] Moreover, it is especially noteworthy that the very period [4] in which the conception of the king's peace was narrowly limited, the period of its beginnings in English law,[5] was that which saw the origin and apparently the greatest native [6] influence of the native English peniten-

[1] From Alfred forward, but particularly under Edward the Elder, Athelstan, Edgar and Cnut; *vide* Hodgkin, *op. cit., passim.*

[2] A movement that gained momentum in the tenth and eleventh centuries. On the king's peace: Pollock's excellent essay "On the King's Peace," in his *Oxford Lectures,* (London, 1890); his remarks in *Select Essays* I, 101 *et seqq.*; P. and M. I, 22-23.

[3] At first over the king's household, retinue, house, "*burh*" and officers: Pollock, *locc. cit.*; P. and M. I, 22 *et seqq.*

[4] From the Laws of Ethelbert, in the beginning of the seventh century, up to and including those of Ine, well along in the eighth. For the dates of the various laws, etc., *vide* Liebermann *op. cit.* I, "*Einleitung*" and his more recent vol. iii; Brunner *Englische Rechtsquellen*; an essay by Maitland on "Materials for the Study of English Law," in *Select Essays* I; also the introductory chapter to the more recent edition of Pollock and Maitland, *Hist. of English Law.*

[5] Where it did not develop so early as with the Frankish kings; *vide* Jenks and Brunner, *opp. citt. passim.*

[6] I. e. in England, of the native English penitentials, e. g. those attributed to Theodore, Bede and Egbert. For dates and textual questions, *supra*, chap. iv.

tials.[1] It is thus evident, so far as the king's peace is concerned,[2] that the time of strongest development of the native English penitentials came when their assistance in discipline was most needed to supplement the weak secular laws.

SECT. 7. SUMMARY OF THE WEAKNESSES OF THE ANGLO-SAXON LAWS

From the discussion in the preceding sections, it is now evident that the Anglo-Saxon Laws were extremely weak in the detection and conviction of criminals and in the enforcement of court sentences. The specific weaknesses and defects of the Anglo-Saxon legal system, in its authority, courts, procedure, penalties and lack of adequate machinery for enforcement all tended[3] to increase crime rather than effectively to suppress it. Partially to fill in these gaps the church[4] discipline exercised a powerful influence. To discuss this influence, particularly in its definite application through the Penitentials, will be the object of the following chapter.

[1] As distinct from their influence on the Continent.

[2] On the judicial weakness of the king, besides the references cited *supra, vide* Stubbs, *Constitutional History* I, 208; Holdsworth *op. cit.* II, 2, 5-6; Hodgkin *Hist. of England,* 438-439; P. and M. I, 45, note 4; Brunner *op. cit.* II, sections 65-66.

[3] Especially in the fostering of perjury and of class discrimination by the compurgation system; in private warfare by vengeance, self-help and kin-help, kin-solidarity, blood-feud and the weakness of the central authority; in the fostering of collusion in ordeals; and in various other respects. For details, *vide supra.*

[4] *Vide supra,* sects. 3-4.

CHAPTER VI

PROVISIONS OF THE PENITENTIALS REINFORCING THE SECULAR LAWS

IN the connection previously mentioned, the Penitentials bore an important relationship to the secular system of punishment and enforcement. Numerous provisions are found in them concerned, directly or indirectly, with feud, compositions, the general enforcement of law, perjury, and other significant phases of the law. As will be demonstrated, these numerous regulations must have afforded material assistance to the secular laws in socialising the early English along these lines. So significant are these regulations, as regards their number and import, that each of them merits distinct treatment.

SECT. 1. THE RULING OF THE PENITENTIALS AS REGARDS FEUD

Chapters in the Penitentials possess great significance for this practice,[1] then so prevalent under the Anglo-Saxon Laws. Friedberg,[2] on his part, considers that the penitential codes hindered the suppression of feud by allowing penances for carrying on feud to be commuted into composi-

[1] *Supra,* chap. v.

[2] Friedberg, E., *Aus den deutschen Bussbüchern,* p. 4 and n. 4; also p. 38, after Wasserschleben 265—*Ps. Bede,* can. xiii; *cf. P. Bede,* can. iv—one year and in the following two years, three quarantines and the required weekdays— a total of three years, misquoted as simply one year by Friedberg: *vide* Wasserschleben 225. "Homicide in vengeance" was that committed in revenge for a kinsman's murder.

tions. In general this view is far from correct. His citation is incorrect and not typical, as it represents only the lighter group in the penances for homicide in vengeance. Another group of penances, indeed, provides seven or ten years which, however, may be mitigated one-half by paying compensation money to the kin.[1] Milder penances of three years, entire or in part, are found in the genuine Penitential of Bede[2] and in that of pseudo-Bede; in numerous Continental penitentials; and, with penance as an alternate, in that of Theodore.[3] When these penances are compared with those prescribed for wilful homicide—usually seven or ten years, sometimes more—one must admit that there was some slight concession to the popular demand for vengeance, though that concession was far from being so great or universal as Friedberg represents.

In justice to the penitential system, however, one must note that, in penancing homicide in vengeance at all, it was in advance of the secular laws, which left unpunished vengeance taken on one who refused to give justice. In the Penitential of pseudo-Egbert (Book ii, canon xviii), there are also interesting penances of excommunication against

[1] *P. Th.*, can. iv, sect. i: "Si quis pro ultione propinqui hominem occiderit, peniteat sicut homicide VII vel X annos. Si tamen reddere vult propinquis pecuniam aestimationis, levior erit poenitentia, i. e. dimidio spatio." *Vide* Wasserschleben 187; Schmitz I, 528 and II, 548; *cf. sect.* 2—three or ten years; *cf. Cap. Dach.*, clvi and *P. Mart.*, can. li, 7. For Continental penalties of three years, *vide* Schmitz II, 534, 255, 219, 625, 183. For a penalty of forty days and seven years, *vide* Schmitz II, 411; *cf. Can. Greg.*, can. cxii, in Wasserschleben 173, after *P. Th.*

[2] Can. iv or v, 3; *cf. P. Ps-Bede*, can. xiii in Wasserschleben 265 and Schmitz II, 690. *Cf. pseudo-Bede* I, (Albers) for the same content, with slightly different wording. See Albers' article in *AKKR., Bd.* 81, (1901), p. 404, sect. 4.

[3] *Cf. supra.* For further details on degrees of homicide, see references on the Germanic laws, *supra*, chap. v and *infra, passim.*

those who refused to make peace and accept justice from those who had wronged them.[1] Finally, and most important, failure to pay secular compositions was, in effect, penalised by the additional penance prescribed when compensation was not paid.

SECT. 2. PENITENTIAL REQUIREMENT OF MONEY COMPOSITIONS

Besides these efforts to restrain feud, the Penitentials contained several important provisions requiring the payment of compositions in fulfillment, apparently, of secular law. Sometimes these take the shape of compositions, sometimes of restitution.

The Penitential of Theodore (canon iii, sect. 3) as alternative to seven years of penance, allows mitigation as the priest may judge, "according as it may be compound with those whom he has harmed"; hence the alternative of the full seven years was probably then used as a penalty for

[1] On the secular laws, *supra*, chap. v.

The passage in *P. Ps.-Egb.*, (Wasserschleben 328-329), apparently refers to the customs of swearing an "oath of unfeud"; "Si homo quis adeo furiosus et duro corde sit, ut nullum saeculare jus et pacem admittere velit cum eo, qui in eum deliquerit, excommunicetur." *Cf.* can. xxix: "Homo qui propter simultatem aliquam certat cum proximo suo, et adeo durus sit, ut juramenta praestet, se nullam pacem admittere velle cum eo, qui in eum deliquerit, excommunicetur. Si autem respiscere velit, et pacem admittere, I annum jejunet propter juramentum, et III quadragesimas in pane et aqua, et reliquum anni jejunet, prout confessarius ejus ei praescripserit."

For the influence of the Church in combatting the blood-feud, stiffening penalties, *cf.*, also, Liebermann, *Gesetze* II, *s. v.* "*Kirchenstaatsrecht*," nos. 9, 9a, 10, 15, *et seqq.* and the *formulae* of excommunication in *ibid.*, I. On the Church's aid in enforcing the payment of *wergild*, see, also, Makower *op. cit.*, 391. Those who delayed to appear before a secular court, when summoned, were excommunicated; *vide* P. and M. I, 461, cited by Liebermann, *op. cit.* II, *s. v.* "*Exkommunikation*," no. 11. Excommunication was also used against great criminals; *supra*, chap. iii and Liebermann, *op. cit.* II, "*Exkommunikation.*"

refusal to compound.[1] This is repeated in the Penitential of pseudo-Cummean (canon iv, sect. 5), and possibly implied in that of Egbert (canon x. sect. 5) and in the *Canones Gregorii*[2] (canon xciv). The *Capitula Dacheriana* (canon cxxviii) provides the penalty of servitude for failure to pay compensations to a bishop or abbot for crimes committed against them.[3] According to the Penitential of Theodore (canon iv, sect. 1) the payment of the *wergild* to the kin will mitigate the penance for homicide in vengeance by one-half.[4] This judgment may have influenced canon clvi of the *Capitula Dacheriana,* according to Wasserschleben.[5]

The Penitential of Vinnian (canon xxiii), concerning homicide by a cleric, requires, besides ten years of penance, the satisfying of the friends of the slain and the rendering of service to his father and mother.[6] Canon ix, concern-

[1] Wasserschleben 187, Schmitz II, 548. These apply to repeated theft of objects from secular owners; for the theft of consecrated objects, etc., *cf.* sect. 2, and *infra, s. v.* "Restitution." The text of sect. 3; "Qui saepe furtum fecerit, VII annorum poenitentia ejus est, vel quomodo sacerdos judicaverit, i. e. juxta quod componi possit quibus nocuit; et qui furtum faciebat, poenitentia ductus semper debet reconciliare ei, quem offendebat et restituere juxta quod ei nocuit et multum breviabit poenitentiam ejus. Si vero noluerit aut non potest, constitutum tempus poeniteat per omnia."

[2] Wasserschleben 476, Schmitz II, 620, Wasserschleben 241 *et seq*, 171, simply repeat "aut quomodo sacerdos judicavit."

[3] Wasserschleben 157: "Episcopus et abbas hominen sceleratum servum possunt habere, si pretium redimendi non habet"; *cf.* similar penalty in *P. Th.* can iii, sect. 1, for seducing a monk from a monastery, Wasserschleben 187, and references there given.

[4] Wasserschleben 187, Schmitz II, 548.

[5] Wasserschleben 159, the penance being given as four years. As regards the above penance in *P. Th.* can. iv, sect. 1, the *wergild* is apparently meant by "si tamen reddere vult propinquis pecuniam estimationis," in the reference *supra.*

[6] Wasserschleben 113: "Satisfaciat amicis ejus quem occiderat, et vicem pietatis et obediente reddat patri aut matris ejus, eo adhuc in corpore sunt et dicat: 'Ecce ego pro filio vestro quecunque dixeritis mihi faciam"; under pain of anathema. *Cf. P. Columb., B.,* 1, A, 3.

ing the striking of a layman, prescribes the giving of money (compensation) to the person struck, according to the judgment of the priest or of some judge. This is apparently repeated in part by the Penitential of Bede (canon iv or iii or ii, sect. 2), with slightly different wording.[1] In section 9 of the preceding, concerning the deforming or crippling (temporarily?) of a man in strife (brawl?), the offender is to pay compensation and for medical treatment, do the work of the injured and perform penance; while the penalty for refusal is increased penance. The whole may be compared with similar provisions in the Confessional of pseudo-Egbert[2] (canon xxii).

[1] *P. Vinn.,* can. ix, (Wasserschleben 110): "Si autem laicus fuerit, XL dierum peniteat et det pecuniam aliquam qui percutit, quantum arbitratus fuerit sacerdos aut justus quisquam. Clericus autem pecuniam dare non debet aut illi aut ille."

P. Bede, loc. cit., (Wasserschleben 225): "Quod et si vulneravit, dies XL, si clericus annum totum, sed et pecuniam pro modo vulneris cui inflixit tributo." *Cf. P. Columb., B.,* can. xxi. *P. Mart.,* can. li, 10, (Wasserschleben 293), requires that, after confession, the bishop or priest shall exhort composition, under pain of penance, for homicide and theft. As regards the reference from the Penitential of Bede, *supra,* note the resemblance to the Germanic tariffs for wounds according to degree.

For the insistence of the Church upon obedience to the secular courts, see, also, Liebermann, *Gesetze* II, *s. v. "Kirchenstaatsrecht."*

The canon cited from Bede's code is numbered differently in the different editions.

[2] Wasserschleben 225, *cf.* 309-310; Schmitz II, *loc. cit.* Some secular laws require that the misdoer must pay for a physician's services for one whom he has wounded. *Vide Ethb., capp.* 62-63; *Alf., Introd.* and 77; some statutes of the twelfth century; Liebermann, *Gesetze* II, *s. v. "Arzt,"* after *EHR.,* (1900), 498.

The provision in *Conf. Ps. Egb.,* can. xxii, refers directly to injuring a man's genital organs or wounding him in the face; and uses the phrase "*mercede medio solvat*", which may refer to the disputed "*medume leodgeld*" of *Ethb.* 21, or a similar later expression. For meanings of the latter phrase, *cf.* Chadwick, *Anglo-Saxon Institutions* 107-108 and Seebohm, *Tribal Custom* 457. It is possible, however, that the above passage in the Confessional may be Continental in origin; *cf. supra,* chap. iv, on authorship. This penitential has a following provision requiring payment of composition to the kin in case of homicide.

It may be objected that, in view of the secret nature of the confessional, the provisions mentioned were intended to apply merely to crimes still secret. Yet, on the other hand, we have seen that penance was also definitely required by secular authority for publicly known crimes, in judging which there was something approaching "concurrent jurisdiction". Hence, one may rightly conclude that the penitential provisions requiring payment of secular compositions applied equally to secret and publicly known crimes, even if the actual imposition of a definite penance was secret.[1] In either case the ecclesiastical requirement of the payment of compositions must have materially strengthened the secular enforcement of penalties, then in great need of such reinforcement.

Closely resembling the demand for payment of secular compositions were the provisions requiring restitution of property stolen or fraudulently obtained or withheld. Of these provisions there are many in the Penitentials, corresponding to similar provisions in the secular law, both Roman and Germanic,[2] with repeated distinctions between the amount of restitution required in the case of secular and of ecclesiastical property. The Penitential of Theodore (canon iii, sect. 3) demands restitution of stolen (secular) property under penalty of heavier penance; while section 2 requires that two-fold restitution be made for stolen secular property.[3] This provision is repeated in the Penitential of

[1] The attacks of many historians upon the allowing of compositions by the Penitentials have failed to allow for this element; *cf. supra*, chaps. ii and iii, under commutations.

For the influence of ecclesiastical canons upon English law and conscience in the pre-Norman period, *vide* Liebermann, *op. cit.* II, *s. v.* "*Kirchenstaatsrecht*," nos. 12, 13a, 14a, 17 and *s. v.* "*Jurist*."

[2] The parallel passages follow, in the notes.

[3] Wasserschleben 187; Schmitz II, 548. Can. iii, sect. 3, concerning frequet theft: ". . . Et qui furtum faciebat, poenitentia dictus semper debet reconcilari ei, quem offendebat, et restituere juxta quod ei nocuerit et

pseudo-Cummean[1] (canon iv, sect. 5). Simple restitution and penance was demanded by the Penitential of pseudo-Egbert, or as the priest shall judge.[2] For technical sacrilege, or theft or robbery of ecclesiastical property or of sacred objects, the Penitential of Theodore prescribes four-fold restitution.[3] This provision is repeated by the *Canones Gregorii* (canon clxvi) and by the *Capitula Dacheriana* (canon lxxxiii),[4] as well as in several Continental penitentials; also in the pseudo-Bede ("Prologue", canon xx),[5] and, possibly, in the penitentials of Vinnian[6] and of David.[7]

multum breviabit poenitentiam ejus. Si vero noluerit aut non potest, constitutum tempus (seven years) poeniteat per omnia." The parenthesis is ours. Sect. 2: ". . . . Pecunia . . . . furata . . . sive rapta . . . reddatur . . . secularibus dupliciter." *Cf. Ethb.* 2-3; *contra*, cans. 1-11.

[1] Wasserschleben 476; *Schmitz* II, 620. *Cf. Coll. XXXV Capp.* can. xii, 2.

The earlier Kentish secular law, *Ethb.* 2-3 did not definitely set the multiple for restitution of secular property. Later laws provide two-fold restitution of secular property: *III Ethr.* 4; *II Cn.* 30, 3; *cf. Ine* 43 and Brunner, *op. cit.* II, 643. But *Ethb.* 9 has three-fold restitution for theft from a freeman; *Ethb.* 28 has the same penalty for taking property from a dwelling; and *Ethb.* 4 prescribes nine-fold restitution for theft from the king.

[2] *P. Ps.-Bede*, can xxxi, "furtum capitale . . . . I annum . . . . et precium reddat," (the variant has additional penance for non-restitution, Wasserschleben 272, n. 6); *cf.* Schmitz II, 695, not in Albers. This canon apparently combines *Egb.*, x, 3 and *Bede*, viii, 4, according to Wasserschleben. *Cf. P. Columb. B*, can. xix. *P. Ps. Egb., Lib.* ii, can. xxv, petty theft: "Si . . . . rem mediocrem furatus sit, reddat furtum ei, cujus proprium erat" and one year on bread and water; "et si non habeat unde furtum reddat . . . . III *annos i. p. e. a.*" Wasserschleben 328, after Thorpe.

[3] Wasserschleben 187; Schmitz II, 547, I, 527.

[4] "Pecunia ecclesiae furta sive rapta reddatur quadruplum," Wasserschleben 178, 152; *cf. P. Ps.-Cumm.*, iv, 1, *Coll. XXXV Capp.* xii, 2.

[5] Schmitz II, 682, with three years' penance.

[6] Can. xxv, Wasserschleben, 113; Schmitz I, 505.

[7] Can. xvi, Wasserschleben 102; Schmitz I, 493,—regarding perjury in church.

A provision for simple restitution with seven years' penance is found in pseudo-Egbert (Book iv, canon xxiv).[1]

SECT. 3. PENANCES FOR PERJURY IN THE PENITENTIALS

The penitential codes undoubtedly exercised a powerful influence towards diminishing the great amount of perjury that, as we have seen,[2] was so prevalent under the weak Anglo-Saxon laws. This influence was extensive not only because jurisdiction over perjury was vested in the discipline of the Church [3] but, in particular, because of the large number and great significance of provisions penancing that crime in the Penitentials.

Perjury is dealt with very severely in numerous provisions of these codes. Though they do not definitely mention perjury committed in compurgation, yet the general descriptions of the crime in the Penitentials indicate that such perjury was included, as well as other kinds—e.g. that in the oath of allegiance sworn to a lord or to the king. Penances are provided for various degrees of perjury: general perjury; suborning; the penance of those suborned; perjury from cupidity, from hate, from fear of death, or as a personal or family favor; conscious and unconscious perjury; that committed under compulsion; and finally, perjury committed on objects not sacred and that on sacred objects and persons. Provisions are found in the penitentials ascribed to Theodore, to Bede and to Egbert; in the so-called *Capitula Dacheriana*; the Pseudo-Bede II; the so-called *Canones Gregorii*; the *Poenitentiale Martenianum*; the Confessional of pseudo-Egbert; the Penitential of pseudo-Theodore; and that of pseudo-Egbert.[1]

[1] Wasserschleben 336—breaking into a church for the sake of theft.

Various provisions of the Laws of Ethelbert prescribe even severer penalties of restitution, varying according to the rank of the ecclesiastic injured, from eleven-fold to three-fold; *vide Ethb.* 1.

[2] *Vide supra,* chap. v.

[3] *Ibid. Cf.* Liebermann *op. cit.* II, *s. v.* "*Meineid,*" no. 10.

Book I of the Penitential of Theodore [2] has a canon of five sections which deal with various forms of perjury. Canon vi, sect. 5 penalizes perjury in a church with eleven years.[3] Perjury under compulsion is to be expiated through three quarantines.[4] Greek custom is quoted against a penance for perjury on the hand of a layman; but, if committed on an unconsecrated cross, the penance is one year.[5] For perjury on the hand of a bishop, priest or deacon, or on an altar or a consecrated cross, the penance is three years; [6] and a similar period is provided for simple perjury.[7]

The Penitential of Bede provided comparatively detailed penalties. Canon iv or v, sects. 1-4 inclusive deals with perjury under compulsion; voluntary commission on the hand of a bishop or priest, or on an altar or consecrated

[1] Definite passages will be given *infra, passim.* On authorship, dates, etc., of the Penitentials, *supra,* chaps. i and iv.

[2] The work of the "*Discipulus Umbrensium,*" of Schmitz, Wasserschleben, (with variants), and H. and S., can. vi.

[3] Schmitz I, 530, II, 550; Wasserschleben 190. *Cf. P. Ps.-Cumm.* v, sect. 2 in Schmitz I, 628; *Can. Greg.,* clxxxviii; *P. Egb.* vi, i; *P. Mart.,* liii, 1.

[4] In sect. 2, Schmitz I, II, and Wasserschleben *locc. citt. Cf. P. Bede,* can. iv, sect. 1, Schmitz I, 560, adds "et legitimas ferias," and has slightly different wording; in Wasserschleben 225, as can. v, 1. Also *cf. Egb.* vi, 4, (alternate), and *P. Mart.,* liii, sect. 2, *Ps-Cumm.* v. sect. 2.

[5] *Vide* sect. 3, *locc. citt. Can. Greg.* cxv; *Bede,* can. iv, sect. 2, or can. v, sect. 2; *Egb.* vi, sect. 7; *P. Mart.* liii, sect. 4. This does not refer to any known oath of compurgation or witness, and may have referred to an oath of allegiance, without consecrated safeguard.

Vide sect. 4, *locc. citt.* and *P. Ps-Cumm.* v, sect. 3, *P. Mart.* liii, sect. 3.

[6] *Vide* sect. 4, *locc. citt. Cf. Can. Greg.,* cxv, *Bede,* can. v, 2, or iv, sect. 2; *Egb.* vi, sect. 2; *P. Mart.* liii, sect. 4.

[7] *Vide* sect. 5, *locc. citt. Cf. Cap. Dach.,* clii; *Egb.,* vi, sect. 5.

cross; unconscious perjury; and false witness.[1] Unconscious perjury is to be expiated by one year, and false witness according to the manner of guilt.[2]

The Penitential of Egbert has several canons which deal incidentally or wholly with perjury. Mentioned as a capital sin in canon i, it is penalised as follows:[3] a layman must expiate with four years; a clerk, with five; a subdeacon, with six; a deacon, with seven; a priest, with ten; and a bishop, with twelve, if habitual. Canon ii, includes false witness among the lesser sins, with penances for the laity of one year; for a clerk, five; for a subdeacon, three; for a deacon, four; for a priest, five; for a bishop, six years. Canon vi has seven sections giving penances for perjury.[4] If it had been done in a church or on the gospel or on relics, it was penanced by seven or eleven years;[5] if on the hand of a bishop, priest or deacon, or on a consecrated cross—by one year or seven or three.[6] For perjury under compulsion, the penance was for three quarantines or three years,[7] of which one was to be on bread and water;[8] if consciously—one year or three quarantines or forty days.[9] For simple per-

[1] *Vide* Wasserschleben 225, as can. v, sect. 1; Schmitz I, 560, as can. iv, sect. 1; Schmitz II, 657, as can. iii, sects. 1 and 2, repeat *P. Th.*, vi, sect. 2 *et seq.*

[2] *Vide* sect. 4, Schmitz I, 560 and II, 658; Wasserschleben 226. *Cf. P. Ps.-Cumm.*, can. v, sect. 1.

[3] *Vide* Schmitz I, 575; II, 663; Wasserschleben 233.

[4] Wasserschleben 234; Schmitz II, 663.

[5] Can. vi, sect. 1, in Wasserschleben 238. Schmitz I, 579 and II, 666 have a variant of seven or ten years. Eleven years come from *P. Th.* can. vi, sect. 1.

[6] Sect. 2 in Schmitz I, 579 and II, 666; Wasserschleben 238. For three years, *cf. P. Th.* can. vi, sect. 1.

[7] Sect. 4, in *locc. citt.* One year is from *P. Th., loc. cit.*

[8] For three quarantines, *vide P. Th., loc. cit.*

[9] *Vide* sect. 3; *cf. Syn Vict.* can. v.

jury, the penance was three years, after the Penitential of Theodore;[1] if wilfully, after suspicion, two years.[2]

In the several members of the Theodore-cycle, penances for perjury are found in the *Capitula Dacheriana,* the *Poenitentiale Martenianum,* the *Canones Gregorii,* and the *Dicta Theodori,* besides references in the Pseudo-Theodore and in others of Frankish origin which require separate treatment. In the *Capitula Dacheriana,* only one provision is found (canon clii) on simple perjury, after the Penitential of Theodore (canon vi, sect. 5).[3] The *Poenitentiale Martenianum*[4] (canon liii) has five full sections on perjury, partly from the so-called "Synod of Patrick" and the *Hibernensis.* As sect. 5 is essentially a homiletic direction, without specific penance, the canon rests upon the Penitential of Theodore. Canon liv, "*De contradictione*" is based upon the so-called "Synod of Patrick" and the Penitential of Egbert. Together with sections from the Penitential of Merseburg it also contains penances for perjury.[4] The chief penances imposed here are for three or six years and provide that the perjurer shall never be allowed to take an oath. The *Canones Gregorii* (canon clxxxviii) repeat the Penitential of Theodore (canon vi, sect. 1) on perjury in a church. Canon cxv of the former is partly from sect. 3,

[1] *P. Egb.* can. vi, sect. 5; *P. Th.* can. vi, sect. 5.

[2] *Vide* sect. 6. *Cf. Syn. Vict.* can. v; *P. Th.* can. vi, 3.

[3] Wasserschleben 158—three years.

[4] Wasserschleben 294 after Martène; but see ch. iv, *supra,* for authorship. Sects. 1 and 2 are from *P. Th.,* can. vi, 1-2; sects. 3-4 are from *Syn. Patr.,* can. xxiii. But see Wasserschleben, *loc. cit.* and *supra,* ch. i, on origin. *Cf. Coll. Can. Hibern., Lib.* xxxiv, can. ii, cited by Wasserschleben, *loc. cit.*

[5] Sect. 1 is from *Syn. Patr., loc. cit.* and from *P. Egb.,* can. vi, 5—three years. Sect. 3, from *P. Mersebg. A.* (Wasserschleben), cans. v, vi, providing six years, of which three are to be penanced in entirety, and that he never be allowed to take an oath. For compulsory or unconscious perjury—three years, one of them entirely.

concerning perjury on the hand of a layman; and partly from sect. 4, regarding that committed on the hand of a bishop, priest, or deacon, or on an altar.[1]

Among the works wrongly ascribed to Egbert of York, the Confessional of pseudo-Egbert and the Penitential of pseudo-Egbert each have several canons providing penances for perjury.[2] The Confessional of pseudo-Egbert (canon xxxiv) prescribes a four years' fast for commission in a church, or on the gospel or relics. But if it has been on the hand of a bishop or priest or deacon, or on a consecrated cross—one year. If the perjurer has been suborned unconsciously, he shall do penance for three required fasts; if wilfully, after suspicion—for two or three years. If he has committed perjury on the hand of a layman, there is no penance.[3]

The Penitential of pseudo-Egbert (Book ii, canon xxiv) prescribes four years' penance for a layman; for a clerk, five years; a subdeacon, six; a deacon, seven; a priest, ten; and a bishop, twelve. If the sin has been through compulsion or unconsciously, the penance is three years, of which one must be on bread and water in the confessor's discretion; and the penitent shall free a slave, if able to do so. If perjury has been committed from fear or for favor or money, let the perjurer give his possessions to the poor

[1] Wasserschleben 180—eleven years; for compulsory perjury—three quarantines. Can. cxv (Wasserschleben 173) provides three years. *Cf. Can Greg.*, can. clxxxviii and *Dicta Th.*, can. clxxxviii, in Schmitz II, 541.

[2] For origin and probable influence, *supra*, chap. iv.

[3] Wasserschleben 314, after Thorpe, *Ancient Laws*, etc. *Cf. P. Ps. Cumm.* can. v, sects. 2-3, 7-8; *P. Th.* can. vi, sect. 3, with slight verbal variations. Note the milder penance for perjury committed on the hand of a layman. The penance which has been described as that for perjury committed wilfully after suspicion has a peculiar wording: "Qui sua sponte perjuraverit, et postea scit, quod perjurus est, III annos vel II jejunet."

and serve God for life in a monastery. Book iv, canon clxviii repeats the penances of the Penitential of Theodore[1] for perjury on the hands of a bishop, priest or deacon, or on an altar or consecrated cross;[2] and for simple perjury or that committed on an unconsecrated cross. For false witness, book ii, canon xxvi prescribes excommunication until penance has been performed[3] according to the direction of the confessor.

In the pseudo-Theodore,[4] canon ix provides very fully for various degrees of perjury. If committed wilfully or consciously, it is to be expiated according to rank: for a layman, the penance is four years; for a clerk, five; for a subdeacon, six; for a deacon or a monk, seven; for a priest, ten; for a bishop,[5] twelve. If committed in a church or on the gospel or relics, the period is eleven years; if on the hand of a bishop or priest or deacon, or an altar or consecrated cross—three years, as in the Penitential of Theodore.[6] For conscious perjury under compulsion by one's lord, the expiation is to be for three quarantines and the lawful weekdays; for suborning—seven years; if suborned ignorantly—one year. For wilful perjury after suspicion, two years are required; for perjury under compulsion—three quarantines or three years, of which one must be on bread and water. If perjury has been committed from greed, the penitent must sell all and give to the poor and enter a monastery for life, or undergo ten years' penance. If it has been through terror or in peril of death, the requirement is three years or exile unarmed, of which one might be on bread and

[1] Wasserschleben 343. On origin, *supra*, chap. iv.

[2] *Vide locc. citt., supra.*

[3] See the preceding notes for references.

[4] The text followed is that of Wasserschleben and Schmitz.

[5] *Cf. Ps. Cumm.*, v, 1.

[6] Sect. 2, after *P. Th.*, vi, 1, 3, 4. *Cf. Ps. Bede* II, xviii, 2.

water and two without flesh and wine; besides releasing a slave or giving alms as the penitent shall be able [1]—a total of five years' penance before communion.[2]

In canon vii, sect. 1 of the same penitential, false witness is penalised by excommunication until completion of penance. In section 2, seven years' [3] penance is provided for perjury from greed, of which three must be on bread and water; while, for consent to false witness, five years are provided, of which one must be on bread and water. Section 3 provides a penance of seven years for perjury committed from hate, of which three must be on bread and water. For favoring a kinsman by perjury,[4] section 4 has the same penance; but section 5 provides that, if it has been committed unconsciously,[5] one must confess to the injured person and keep silence for an hour or do penance with twelve psalms. Other following sections apparently refer to lying.

The Penitentials of pseudo-Bede [6] I and II have several provisions against perjury and false witness, the number and wording varying in the different penitentials or versions used by the principal editors. In Albers' version, called by us "Penitential I," the sections usually are not numbered but, in the versions of Wasserschleben and of Schmitz—"Penitential II"—they are numbered. In Wasserschleben's version, in which the latter *capitula* are often Frankish, canons xviii, xxvi, xxxiii and xlix prescribe detailed penances either for perjury or for false witness.

[1] Sects. 3-9, after *P. Bede*, v or iv, 1; *Ps. Cumm.*, v, 6-8; *Ps. Bede*, xviii, 2, xxxix, 2. *Cf. P. Vinn.*, xxii; *P. Columb. B.*, v; *Ps. Cumm.*, 6-8; and *P. Rom., passim.*

[2] *Cf.* Wasserschleben 593, note 2.

[3] Wasserschleben 590. *Cf. P. Ps. Cumm.* v, 10.

[4] "Placet primum proximo suo", in Wasserschleben *loc. cit.*

[5] "Si quis mendacium dixerit per ignorantiam" may refer simply to lying. Similar remarks apply to sects. 5-7. For provisions resembling the above—*P. Eccl. Germ.* and others *infra.*

[6] See discussion, *supra*, chap. iv.

The content of canon xviii is found in all three versions, with some variations, as well as that of canon xxvi. But Schmitz's edition has verbal variants for both, and Albers omits any canons like xxvii, xxxiii, and xl of Wasserschleben's edition, and also presents variants to the readings of canons xviii and xxvi.[1] Canon xviii prescribes, for perjury under compulsion, three quarantines and the lawful week days; [2] provides penances similar to those in the Penitentials of Theodore and of Egbert for wilful perjury and for that committed on an unconsecrated cross; or on the hand of a bishop, priest or layman; or on an altar. For unconscious perjury, however, it requires one year.[3]

Section 2 provides, for perjury in a church or on the Gospel or relics, seven or eleven years; [4] if it has been committed on an unconsecrated cross, one year or seven months; [5] if one has been unconsciously suborned, one year or three quarantines or forty days; [6] if under compulsion, three quarantines or three years, of which one must be on bread and water.[7] Simple perjury is penanced as in the peniten-

[1] Vide cans. xviii, xxvi-xxvii, xxxiii, xii, x, in Wasserschleben 255, 267, 270, 271, 280-281; Schmitz II, 691, 693-694, 700-701. *Cf.* Albers, in *AKKR.* vol. 81, pp. 409.

[2] Wasserschleben 267 agrees with Schmitz II, 691: "conpulsus a domino." Albers omits all of sect. 1 of the version of Wasserschleben and Schmitz, as far as the penalty for perjury in a church. Wasserschleben traces sect. 1 to the *P. Bede*, v, 1-3, and sect. 2 to the *P. Egb.*, vi, 1-6. Hence, Albers' version of this canon is based on the passage from Egbert alone as a source.

[3] Wasserschleben and Schmitz, *locc. citt.*, agree. For further discussion of sources, *supra*, chap. iv.

[4] Wasserschleben and Schmitz agree; Albers has ten instead of eleven. The latter is nearer to that of *P. Th.* and accepted versions of *P. Egb.*, vi, from which this and following sub-sections come.

[5] Wasserschleben and Schmitz; but Albers has four months.

[6] All agree.

[7] *Ibid.*, save for verbal variants in Albers.

tials of Theodore and of Egbert;[1] but the wilful perjurer after doubt is to receive two years.[2]

In canon xxvi, perjury is also penanced among capital offences.[3] But this canon also prescribes, after the Penitential of Egbert, penances according to rank: for a layman, four years; for a clerk, five; subdeacon, six; deacon, seven; priest, ten; bishop, twelve, if habitual. All these are according to Pseudo-Bede II. Albers' version, or Penitential I, agrees in general with these but presents some important differences. It prescribes three years for the laity, and for perjury in general. It has severer penances for habitual perjury: if committed by a bishop, fourteen years; if by a priest, twelve; if by a deacon, ten; if by a subdeacon, eight; if by a clerk, seven; if by a layman,[4] five.

Canon xxvii, in the editions of Wasserschleben and of Schmitz, includes false witness among the lesser sins.[5] Following canon ii of the Penitential of Egbert, it prescribes milder penalties; for a layman, one year; for a clerk, two; subdeacon, three; deacon, four; priest, five; bishop,[6] seven.

[1] Three years, also in many others. *Vide infra.*

[2] All agree, save for variant spelling. Allbers adds the familiar remark about the harmlessness of swearing on the hand of a layman.

[3] For ecclesiastical definitions and classifications, see ch. ii. See *P. Egb.* can. i, Wasserschleben, Schmitz I, II, 693. For *Ps.-Bede,* can. xxvi, vide Wasserschleben 270, Schmitz II, 693 *et seq.*, Albers, cited p. 405 *et seq.* (headed "*Capitula I*") "*De Capitalia* (!)." It is here classed with adultery, theft, robbery, drunkenness, general cursing, and given the same penance with the above and homicide, *q. v.* The list of Albers' version includes also "idolatra, molles, sodomita," p. 406.

[4] It groups habitual perjury with other "capital crimes." For the passage, see Albers, article cited, p. 405: "Si consuetudine erit episcopus", etc.

[5] False witness is grouped among the lesser sins with theft and the like. The passage is found in Wasserschleben 271, Schmitz II, 694: "*De minoribus peccatis*"; omitted in Albers.

[6] *Cf.* the same versions, *locc. citt.*: "De . . . maledictione ac detractione causa invidiae," etc.—much harsher.

Another canon (xxxiii), after the Penitential of Bede,[1] penances false witness according to the degree of crime or of guilt (of the offence for which it was given?).

Canon xlix, omitted by Albers,[2] contains four sections in Wasserschleben's version and five in that of Schmitz;[3] the differences consisting in numbering alone. Most of the last section deals specifically with perjury in the oath of fealty.[4] Section 1 prescribes: for wilful perjury, if by a bishop, twelve years, four of them on bread and water; by a priest, ten, three of them on bread and water; by a deacon or monk, seven, three of them on bread and water; by a subdeacon, six, of which two must be on bread and water; by a layman, three, one of them on bread and water. For perjury under compulsion or through any necessity or unconsciously, the expiation is three years, one of which must be on bread and water. If committed through greed,[5] one should sell all and devote one's life to a monastery. If it has not been through greed but in peril of death, the penance is unarmed exile for three years on bread and water; two

[1] *P. Ps. Bede II,* can. xxxiii, after *P. Bede,* v, 4 *et seq.* For the following, *vide* Wasserschleben 273; Schmitz II, 695; omitted in Albers' version, or Pseudo-Bede I.

[2] This canon xlix is apparently derived from the Council of Elvira, (*an.* 305?), can. lxxiv, in Hefele, *op. cit.*, (English translation), I, 168: "*De falsis testibus*:" "Falsus testis prout est crimen abstinebitur," etc. More definite penances follow and will be discussed *infra,* this chapter. They are omitted by *Ps. Bede,* can. xxvii.

[3] Wasserschleben 280; Schmitz II, 700-701, the latter numbering the citation sect. 1, from the "*Judicium Theodori,*" while Wasserschleben includes it in sect. 1.

[4] Headed in Wasserschleben but not in Schmitz: "*De violatoribus juramenti regalis.*" Wasserschleben regards this as Continental in origin, from the Council of Altheim, (*an.* 916), cans. xxii *et seqq.* The rubric stands before both sections 3 and 4 in Wasserschleben's version but is omitted by Schmitz. For further detail on the kinds of perjury and oaths, *infra.*

[5] Of a layman: *vide locc. citt.*

years more without flesh and wine; then two in almsgiving; making a total of seven years' penance before communion, in addition to freeing a slave (or serf?).[1] False witness is to be expiated by a bishop seven years, of which three must be on bread and water; if committed by a priest, five, of which three must be on bread and water; if by a deacon or monk, four, of which two must be on bread and water, besides deposition until the penance is complete; if by a clerk or a layman, three, of which one must be on bread and water. Finally, for consent to false witness, the penance is five years.

Section 2 of canon xlix, citing the "*Judicium Theodori*"[2] agrees with the Penitential of Theodore, canon vi, as regards perjury on a layman's hand; on the hand of a bishop, priest, or deacon; or on an altar or consecrated cross; or on an unconsecrated cross; or under compulsion. But it differs from that ascribed to Theodore by prescribing four years for simple perjury, instead of three; and ten years for that in a church, instead of eleven. It also adds penances of seven years for suborning; one year for those unconsciously suborned; and two years for wilful perjury after doubt.[3]

Section 3 (2), apparently after a Continental source[4] from the tenth century, prescribes, for wilful perjury, seven

[1] "Post vii annos judicio sacerdotis communicet," in *locc. citt.* For discussion of "*servum*", ch. ii, on penances.

[2] Erroneously, as will appear. Not numbered in Wasserschleben.

[3] But variants of *P. Th.* can vi, give ten years for that in a church; see that penitential, though this variant is not generally accepted. Wilful perjury after doubt apparently covers the meaning of "qui autem suspicatur—tamen jurat pro consensu," in *locc. citt.*

[4] According to Wasserschleben 280 *et seq.*. *Syn. Altheim. an.* 916, can. xxv and the following section; but Schmitz omits source and Wasserschleben omits references.

years, "according to the canons." For unconscious perjury or suborned perjury, three quarantines on bread and water and salt;[1] if committed under compulsion for the redeeming of life, three quarantines and the required weekdays;[2] if for any necessity, three years on bread and water; if by a "*servus*" compelled by his lord, three quarantines and the required weekdays; for wilful perjury and for subornation, twelve years strictly,[3] "according to the canons or leave the world, according to Ambrose, and serve God, according to Augustine." For unconscious perjury the penance is one year; for those unconsciously suborning, seven years, strictly; if done wilfully after doubt—three years on bread and water and salt.[4]

Section 4, (3), prescribes, for wilful subornors, a monastic life and deprivation of arms, or three years "among the *audientes*" on bread and water and salt. After another year of severe penance, they shall undergo the six years' penance; in another year they may receive communion without the sacrifice; and, after fulfilling the tenth year, attain (full?) communion.[5] "Others,[6] however, (say) twelve years, and in this consent, that never may they eat flesh or drink wine all the days of their lives."

Section 5, (4), discusses chiefly perjury in the oath of fealty. The latter portions repeat the penance for perjury

[1] For explanations of this and similar phrases, see chs. ii, iii, also *infra.*

[2] "Coactus pro vita redimenda" is explained *infra.*

[3] *Supra,* as in notes.

[4] *Vide supra,* for Latin, sect. 4 (3).

[5] "Post alium vero sexennium penitentiale subiciantur acriori et alio anno communionem sine oblatione percipiant et expleto decennio communionem consequantur," *locc. citt. Cf. supra,* on penitential stations, chs. ii, iii.

[6] For explanation of "*alii,*" *vide infra,* summary, for penances and sources.

committed from greed, mentioned above.[1] Canon li, after the Council of Trèves, canon xxii, is interesting as prescribing the ordeal of fire for notorious suspects.[2]

The important relation of the Penitentials to the question of perjury is thus seen in their many penalties for it and in the distinctions according to degree. The meaning of perjury in the Penitentials apparently applied to that committed in any oath. At least in the later pre-Norman period,[3] it included perjury in the oath of allegiance and in those of fealty to the king or to a lord; breaking a pledged word; being outsworn in compurgation, in the case of the principal; perjury by an oath-helper; that committed in vows to God; and, in the later period, possibly something approaching breach of contract.

During this period, all these forms of oath existed or came into existence. As they were usually sworn on some sacred object, such as have been mentioned, the Church necessarily provided severe penances for the impiety which was committed in perjury, in addition to the iniquity and

[1] According to Wasserschleben 281, sect. 4; Schmitz II, 701, sect. 5. The variant "*sacramentum,*" in Wasserschleben 281, note 1, may refer to the loss of oath-privilege often prescribed in many penitentials and secular laws. Such a mistake in copying from a possibly corrupt original would be facilitated by the same number of letters and the similar beginning in "*sacramentum*" and "*sacrificium.*" According to Wasserschleben, the Synod of Altheim, from which some of this is taken, has "*sacramentum.*" The distinction is important, as bearing upon the question of public penance; *supra,* chaps. ii, iii.

[2] "Si vero tanto talique crimine publicatur, ut criminosus a populo suspicetur . . . . aut . . . . aut . . . . per ignem candente ferro," etc. *Vide* Wasserschleben 282; Schmitz II, 701. Possibly Continental in origin, this passage is paralleled in Anglo-Saxon usage.

[3] Note, however, the well-known fact that the oath to the King of England did not, apparently, precede feudal allegiance until after William the Conqueror forced such a rule upon his subjects in the Salisbury oath.

harmfulness of perjury itself.[1] That they applied to perjury in connection with court procedure is also apparent from the ecclesiastical penalties previously mentioned as being found in the secular laws. Besides those already mentioned,[2] there is a definite command in II Athelstan, 26, 1, that the confessor announce to the bishop, within thirty days, if the perjurer wishes to turn to penance, "but if not, let him expiate as the bishop will grant."[3]

In summary, it is noteworthy that all the Anglo-Saxon penitentials, together with the Continental, distinguished degrees of perjury according to the consecrated objects on which the oath was sworn or according to the motive prompting the perjury, rather than for the motive of the oath.[4] As regards the first class, Lea has severely censured the distinctions according to material objects on which the oath was sworn, on the ground that it lessened the value of the simple oath.[5] But he omits mentioning the numerous unqualified penances for simple perjury and, even more harmful to his argument, fails to show clearly and fairly the

[1] For oaths of fealty on the hand of a lord, on relics, etc., see formula of oath to a lord, in Liebermann II, *s. v.* "*Eide.*"

[2] *Vide supra,*

[3] Liebermann II, 618; A.-S. "His scrift hit gecythe tham biscope"—"bete be tham the se biscop him forgifan wille."

According to Liebermann, *op. cit.* II, *s. v.* "*Meineid,*" no. 6, counting perjury as one of the most grievous crimes.

For the forms of oaths among the Anglo-Saxons, *vide* Liebermann, *loc. cit., s. v.* "*Eidesform*" and the Anglo-Saxon *formulae* published in his vol. i.

A few penances for perjury are mentioned in *ibid.* II, *s. v.* "*Meineid,*" no. 9a. *Cf. supra,* chap. v, for secular laws requiring penance, etc.

[4] *Vide supra,* rather than according to oath of fealty, compurgation, pledge, etc. Though some of the Continental penitentials make such distinction.

[5] Lea, *Superstition and Force* 29 *et seq.,* citing the *P. Ps-Th., P. Ps.-Cumm., P. Dav., P. Astes.,* after Wasserschleben.

connection between perjury and the forms of oaths then used.[1] It has also been previously demonstrated[2] that the sacramental oath of compurgation on sacred objects, with a religious curse attached was not introduced by the Christian Church, but that the latter merely made use of an ancient Germanic custom. Hence we conclude that, as in our modern swearing upon the Bible, the ancient Germanic races recognised very early the insufficiency of an oath without sacral safeguard.

Consequently, the Church did not introduce a distinction between the simple oath and the sacral oath. It substituted Christian sacral objects and act; and in severely penancing the impiety of such perjury they were, very sensibly, doing their best to enforce emphatically respect for the oaths used in the customary system.

As we have seen, the legal forms of oath were all directly connected with such sacral objects, acts or persons. Hence, the use of unconsecrated crosses and the like might constitute illegal procedure and facilitate perjury[3] by collusion between the conducting priest and a suborner, compurgator, or witness. As regards the omission of penance for perjury on the hand of a layman, that provision is specifically mentioned as introduced from the Greeks. In Germanic procedure, such oaths were ordinarily not used in criminal cases. They may refer to simple promises or to feudal oaths, at least in the later period; though, in limited cases, in pre-Norman England, oaths might be sworn on the hand of the

[1] For these penances, *vide supra.*

[2] *Supra*, chap. v, *s. v.* "Religion;" also on religious safeguards, and Lea, *op. cit., passim.*

[3] E. g. the suborner of perjury might induce the compurgator to commit perjury by securing the substitution of an unconsecrated object with the knowledge of the compurgator and, necessarily, of the conducting priest. Misconduct of compurgation is, indeed, definitely provided for in the secular laws; *vide supra*, chap. v, under compurgation.

reeve (one citation), or on that of a kinsman who is not a compurgator.

Summarising the penances for perjury according to sacral objects and persons, the following penances are found in the English penitentials: if committed in a church or on the Gospel or relics—eleven or seven years, rarely four;[1] if on the hand of a bishop, priest or deacon, or on an altar or consecrated cross—usually three years, rarely one;[2] if on an unconsecrated cross—one year.[3] In fairness to Lea, it may be remarked that, though the Church did not introduce distinctions between a simple oath and a sacral oath, yet it distinguished between perjury committed on two classes of consecrated objects and, in this way, possibly weakened its own system.

In the earlier penitentials used in England and in the native Celtic penitentials, there was little distinction of degrees of perjury according to motive. The chief division was according to the sacral ritual and as to whether it was

[1] *Vide supra*, chap. v, under compurgation.

Penances of eleven years are found in the Penitentials of Theodore, Bede, pseudo-Theodore, and pseudo-Cummean, *locc. citt., supra.* Those for seven or eleven years are provided in *P. Egb.*, vi, 1 and in the Egbert-cycle; for four years, in *Conf. Ps. Egb.*, xxxiv. *Cf. P. Dav.*, xvi—that he shall restore four-fold, in Schmitz I, 493. The penance at first is for simple perjury committed in a church, as in Theodore, and the alternatives are introduced later.

[2] For three years—the Penitentials of Theodore, Bede, Egbert (with an alternative of one or seven), pseudo-Theodore, pseudo-Egbert. *Cf. Can. Greg., P. Mart., P. Ps. Cumm.*, v, 3 and *locc. citt., supra*; also *Conf. Ps. Egb.*, xxxiv, (Wasserschleben 314). For five years, see Schmitz' edition of *P. Val.*, can. i, 52.

[3] See the Penitentials of Theodore, Egbert, pseudo-Egbert, pseudo-Bede, pseudo-Theodore, pseudo-Cummean, and *Poenitentiale Martenianum, locc. citt., supra.* Note the omission of specific penances in the Penitential of Bede and in the *Canones Gregorii* and *Capitula Dacheriana;* though a distinction is implied by mentioning consecrated crosses in them in connection with perjury. In *P. Egb.*, vi, 3 is an alternative of seven months; *vide* Wasserschleben 238 and Schmitz II, 666.

wilful perjury or that under compulsion. Perjury in general, mentioned above as "simple perjury", usually meant any kind of wilful perjury.[1] It was penanced by three or seven years, or according to the grades of the clergy as contrasted with the laity,[2] sometimes being four years for the laity.

Compulsory perjury, or perjury under compulsion, is definitely provided for in nearly all of the Penitentials.[3] The penance was either one year, three quarantines, forty days, or two years, of which one must be on bread and water; or three years, of which one must be on bread and water.[4] The fact that there was frequent provision for lighter penal-

[1] The penalty is severer than for compulsory or for unconscious perjury, mentioned in the same canons; hence the inference.

[2] For three years—*P. Th.*, can. vi, 5; *P. Bede*, can. iii, 2 or can. v, 2; *Cap. Dach.*, can. clii; *P. Egb.*, can. vi, 5; *P. Ps. Bede*, (Albers' ed., pp. 406, 404), *P. Ps. Egb., lib.* ii, can. lxviii; *P. Ps. Bede*, (Wasserschleben, Schmitz), can. xviii, 2, (but *cf.* four years in can. xlix). For four years—*Syn. Vict.*, can. v; *P. Ps. Bede* (Albers); *P. Egb.*, can. i; *cf. P. Dav., loc. cit. supra*, and *P. Ps. Th.*, can. ix (24), 1. For a penance of seven years and that he never be allowed to take an oath, *P. Vinn.* can. xxii in Schmitz I, 504 after Wasserschleben; *cf. P. Columb. B.*, can. v. For definite references, *vide supra* under individual penitentials. For penances of the clergy for perjury, *vide supra* and especially Schmitz I, 375, 408, 477, 554-555, 664, and II, *passim*; particularly in *P. Ps. Bede, P. Ps. Egb., P. Ps. Th., P. Egb.*, can. i, but not in *P. Th.* nor its native cycle. Penances are enumerated *supra*, under individual penitentials.

[3] *P. Th.*, can vi, 5; *P. Bede*, can. iv or v; *P. Egb.*, can. vi, 4; *Ps. Bede* II, can. xviii; *Conf. Ps. Egb.*, can. xxxiv; *P. Mart.*, can. liii, 2; *P. Ps. Th.*, can. ix, 3, 7; *Sin. Vict.*, can. v; *P. Ps. Bede*, can. xlix. *Cf. Ps. Cumm.*, can. v, 3; *P. Rom.*, can. xxiv; and *P. Vinn.*, in Schmitz I, 504; omitted in *P. Dav.* and in *Can. Greg.*

[4] For three *quadrigesimae*—*P. Th.*, can. vi, 2; *P. Bede*, can. iv or v, 1; *P. Egb.*, can. vi, 4, as an alternative; *P. Ps. Bede*, can. xviii; *P. Ps. Th., loc cit.*, for unconscious perjury, *cf. Sin. Vict.*, v; *P. Egb.*, can. vi, 3, with alternate. Some of them add "et legitimas ferias."

For three years—*Ps. Bede*, can. xlix, 1, of which one year must be on bread and water; *P. Egb.*, can. vi, 4, as an alternative; *P. Vinn., passim; P. Ps. Th.*, as an alternative.

ties for unconscious and for compulsory perjury further supports the contention above—that the compurgation system fostered perjury by frequently obliging the compurgator to swear to the truth of that of which they were ignorant.

Perjury "*per cupiditatem*" or from greed, mentioned in some of the later penitentials, may refer to that committed in cases of theft and of debt; of vouching to ownership of property which it is suspected has been stolen; and the like.[1] It is usually omitted in the penitentials of English origin, possibly being included in other forms. Though it is found in pseudonymous penitentials used in England but probably of Continental origin, and in Continental regulations.[2]

Suborning of perjury is not specifically mentioned in the penitentials of Theodore, of Egbert, or of Bede; nor in the Theodore cycle; nor in the Confessional of pseudo-Egbert; nor in the Penitential of pseudo-Egbert. But it is penalised in the Synod of *Lucus Victoriae,* in the Penitential of pseudo-Theodore, and in several of the Continental penitentials.[3] The penance was usually seven years;[4] but was one year for those suborned.[5]

[1] In this connection, see, especially, *P. Dav.*, can. xvi, on perjury in a church: that the perjuror restore four-fold; *vide* Wasserschleben, *ut infra*, and Schmitz I, 493.

For explanations of such oaths, *supra*, chap. v.

[2] In *P. Ps. Th.*, can. ix, (or xxiv), 8, (Wasserschleben 593); *P. Ps. Bede*, can. xlix, 1, (Wasserschleben, *passim* and Schmitz II, 700); *P. Ps. Cumm.*, can. v, 3-4, in Schmitz I, 628; *P. Eccl. Germ.*, cans. xxi-xxiii; *P. Rom.*, can. xxv, in Schmitz I, 478, *cf.* 416. The usual penance was severe: that the perjuror must sell all and enter a monastery for life; or sometimes that there should be ten years of penance and that he should also free a slave (serf?).

[3] *Ps. Bede*, can. xlix, 1 (omitted by Albers); *Syn. Vict.*, can. v (Wasserschleben 104, Schmitz I, 494); *P. Ps. Th.*, can. ix, 4, in Wasserscleben, 593; *P. Ps. Cumm.*, can. v, 6, in Schmitz I, 628 and II, 621.

[4] But *Syn. Vict.*, cans. v, ix probably had six years for the laity; see Wasserschleben ed.

[5] *P. Egb.*, can. vi, 3: "Seductus ignorans et postea cognoscit," the usual

Those who commit perjury wilfully, after suspicion that they are being led into it, were penalised in the penitentials of Egbert, of pseudo-Bede, and of pseudo-Theodore; in the Synod of *Lucus Victoriae* and in the Confessional of pseudo-Egbert; as well as in many Continental penitentials.[1] The usual penance was two or three years.[2]

Perjury committed in peril of death or to redeem life is not mentioned in the penitentials of Theodore, of Bede, or of Egbert; nor in the *Poenitentiale Martenianum,* in the Theodore-cycle, nor the pseudo-Egberts. But it is found in the pseudo-Bede, the pseudo-Theodore, and in Continental penitentials.[3] It may have referred to perjury by a principal to save his life in a capital or botless case or possibly, when under compulsion.[4]

Contrary to the assumption of Brunner and other writers

form; *vide* Schmitz II, 666 and *locc. citt. supra. Ps. Bede* has the alternatives of four quarantines or forty days. *P. Bede,* can. iii or iv or v (according to the version used), sect. 3 has one year; *vide* Schmitz II, 658. *Cf. Syn. Vict.,* can. v, (Wasserschleben 104 and Schmitz I, 494); *P. Ps. Th.,* can. ix (24), sect. 5, (Wasserschleben 593 and Schmitz II, 416)—if it has been ignorantly, the penance should be lighter.

[1] *P. Egb.,* can. vi, sect. 6 in Schmitz I, 579 and II, 666; Wasserschleben 238.

[2] For two years—*Ps. Egb., Syn. Vict.* For three years as an alternative—*Conf. Ps. Egb. Ps. Bede II* (Wasserschleben and Schmitz) has three years in can. xlix, 1 according to Wasserschleben and two years according to Schmitz. *Vide* Schmitz II, 700 and *locc. citt., supra,* under *Ps. Bede.*

[3] For three of two years—*Conf. Ps. Egb.,* can. xxxiv, in Wasserschleben 314; *P. Ps. Bede,* can. xlix, 1 (three on bread and water); *cf. P. Ps. Th.,* can. viii, 6.

[4] "Per mortis periculum incurrit"—three years unarmed, exiled, of which one must be on bread and water; two more without flesh and wine; besides the freeing of a slave or the giving of alms, etc. The total must be seven years; *cf. P. Th.,* can ix, in Wasserschleben 593; *Ps. Cumm.* can. v, section 4 in Schmitz I, 628, II, 621; *Ps. Bede,* can. xlix in Schmitz II, 700.

on secular law,[1] there was a distinction between perjury and false witness. At least such a distinction is found in the penitentials of pseudo-Bede, pseudo-Theodore, and on the Continent; though it is omitted by those of Theodore, Bede, and Egbert, in the Theodore and Egbert cycles and in the secular laws. As in the case of perjury, various motives were distinguished in the latter manuals: for example the personal favoring of a kinsman, greed and the like. They were also differentiated according to the crime or case in which false witness had been given.[2] The false witness mentioned may have been that by community or transactions witnesses in sales, exchange, vouching to warranty and other business transactions which required or used witnesses to ownership.[3] In that connection the milder penalties imposed may further connote the low estimate of witnesses in Germanic law.[4]

SECT. 4. HOW PENANCE AIDED THE SECULAR LAWS THROUGH ADDITIONAL PENALTIES.

Heinous sins[5]—e.g. murder, incest, adultery and grand larceny—which usually constituted crimes punishable by

[1] See Brunner, *s. v. "Meineid"*; also *supra* on false witness, especially *P. Egb.* can ii in Wasserschleben 234, Schmitz II, 663.

[2] The Council of Elvira (*an.* 305 or 306) laid down the principle that false witness should be penanced according to the degree of crime; Schmitz I, 376 and *supra.* For penances: *P. Bede,* can. iv or v, sect. 4, *cf.* sect. 6 in Schmitz I, 560, Wasserschleben, 226; *cf. Ps. Cumm.* can. v, sect. 11; "from hate"—*Ps. Th.* in Wasserschleben, 590—seven years, of which three must be on bread and water.

[3] For explanations of these systems of witnessing, *vide supra,* ch. v. On further Continental penances for perjury, *vide* Schmitz I, 747, 802, 804, 811, 400, 786, 812; II, 365, 485, 417, 295, 333, 351, 359, 363, etc. For further Anglo-Saxon penances on perjury, *vide supra,* ch. v; also in Thorpe, pp. 26 *et* seq., 33, 318 and passim.

[4] *Vide supra,* chap. v.

[5] Merely a summary is presented here, as penitential discipline of these offences has been thoroughly treated in works on canon law and the like.

heavy secular penalties, also, were punished by severe penances. Hence, in such cases, the culprit who had been convicted in court had to undergo a total of punishment composed of severe ecclesiastical and secular parts. For example, premeditated murder [1] would thus be punished by payment of *wergild* plus the performance of anywhere from seven to fifteen years of severe penance,[2] varying with the rank. For adultery of a freeman, the total punishment might include a heavy secular [3] payment plus three to ten years'

[1]For murder—seven years on bread and water, in *Can. Hibern.*, (Wasserschleben 136), with alternative ten years; but *P. Th.*, iv, 4, has seven years, three of them without flesh and wine, (Wasserschleben 188). *Cf. Cap. Dach.*, lxxxii, (Wasserschleben 152); *Ps. Bede II*, can. xiii, 2, with alternatives; *P. Ps. Egb., lib.* ii, can. i, (Wasserschleben 323); *P. Egb.*, iii, (Wasserschleben 234, Schmitz I, 576); *P. Ps. Bede II*, can. xvi, with alternative, (Wasserschleben 266).

For penances of thirteen or fourteen years, with compensations, *vide Can. Hibern., De Disput. Hibern. Sin.*, (Wasserschleben 136); *P. Egb.*, iii, as alternative; *Ps. Bede II*, can. xvi, as alternative.

For ten years of penance—*Can. Hibern. loc. cit.*, can. iii, as alternative.

For six years of penance—*P. Egb.*, iv, 11, as alternative, (Wasserschleben 235; Schmitz I, 577).

For five years of penance—*P. Egb.*, iv, 11, as alternative, *locc. citt., supra.*

For four years—*ibid.*, as alternative; *P. Bede*, iii, 2, (Wasserschleben 224 and 235); *Ps. Bede II*, xiii, 2, as alternative, (Wasserschleben 265).

For three years—*P. Dav.*, xi, (Wasserschleben 102); *Syn. Vict.*, ii, (Wasserschleben 104); *P. Ps. Egb., lib*, ii, can. i, (Wasserschleben 323); P. Mart., li, 4.

[2]For excommunication and other disabilities of penitents, *supra*, chaps. ii, iii and v, under those heads. For secular penalties, *supra*, chap. v, *passim.*

[3]Both penances and secular penalties for adultery often varied with the rank; *vide supra*, chap. v, under social discriminations and chap. ii, under penances of the clergy, etc.

For varying secular penalties for adultery of a freeman, *vide VI Ethr.* 12; *I Edm.* 4; *and* Liebermann, *Gesetze* II, *s. v.* "*Ehebruch.*" *Cf.* Wilda, *Strafrecht* 821-822.

For three years of penance for adultery, *vide* Wasserschleben 198, 102, 222 and 258. For other penances of this offence, *vide* Schmitz' edition, *passim.*

severe penance; while somewhat similar penances were often prescribed for incest.[1] Ecclesiastical influence upon the secular laws is also shown in provisions punishing adultery or fornication with one's slave. Secular punishment of the husband for breaking his marriage vows is missing in the earlier secular laws, but appears in later laws, a fact due to the influence of the Church. Even then the penalty is more often of an ecclesiastical nature and far lighter than for infidelity of the wife.

Besides adding the foregoing and other ecclesiastical penalties,[2] the penitential system supplied severe punishment for offences that are now penalised by secular government as most heinous crimes but were then visited with too light penalties. In this way it exerted a powerful influence towards stiffening the penalties for such crimes as well as in temporarily filling important gaps. In other important cases, the penitential system provided penalties for serious offences of immorality that were either left exclusively to its jurisdiction [3] or were often entirely neglected by the secular law. In particular, its penalties for rape,[4] for fornication,

[1]Incest with one's mother was penalised by fifteen or fourteen or twelve years; *vide* Wasserschleben 253, 151, 171, 344, 260, 307 and Schmitz I, 576. If committed with one's sister, the penance was five years, in *P. Bede*, can. ii, 17, (Wasserschleben 222).

For secular punishment of incest, *vide EGu.* 4 and *Cn. Sec.* 52; also Liebermann, *op. cit.* II, *s. v.* "*Blutschande*" and *supra*, chap. v, under intermingling of jurisdictions, secular requirement of penance, etc.

[2]See excommunication and other disabilities, *supra*, chaps. iii and v.

[3]*Vide supra*, chap. v, under jurisdiction.

[4]On rape, *vide* Liebermann, *op. cit.* II, *s. v.* "*Notzucht*"; but note Liebermann's remarks on the ambiguity of laws apparently referring to rape, that of a married woman not being distinguished from adultery. Rape is penalised with money compositions which rise with the rank, sometimes as high as the *wergild*; and the penalty increased in the later laws. *Vide* Liebermann, *loc. cit.*; Wilda, *Strafrecht*, etc. 837; and P. and M. I, 188, for severe later laws. Rape of a female

and for abortion,[1] possessed great value in counteracting the somewhat low estimate [2] in which women and children were, apparently, held by the secular laws. In their frequent penances for brawling [3] of various kinds, in distinguishing various degrees [4] of homicide, according to motive, and in their various provisions penalising mistreatment of slaves [5] and of serfs, the Penitentials also helped to place a higher estimate upon life and humanity.

slave by a male slave was punished by castration; *vide* Liebermann, *loc. cit.*

On the penances for rape, abduction, etc., in the Penitentials, see the standard editions of Schmitz, *s. v.* "*Raub*," *passim*, for many references.

[1] Fornication, in various forms, was mostly penanced very severely in the Penitentials. They often required penance of one year, with added severities, though some have as high as three or five years of penance; *vide* Wasserschleben 101, 198 and *passim* and Schmitz, *s. v.* "*Unzucht*", etc.

Abortion is penanced by long terms and is very frequently associated with magic in the Penitentials, which may account for some of the severity. Frequently mentioned by the Penitentials, the penance for abortion varied from a frequent prescription of three years to as low as one year or the three *quadrigesimae*. See the standard texts in the editions of Wasserschleben and of Schmitz, *passim*.

[2] For the low estimate of women by the Anglo-Saxons, *vide supra*, for the low penalties for adultery, rape, and the like. Apparently the picture of the high place of women in Germanic literature is far from the average conditions that actually prevailed.

[3] Brawling and fighting of various kinds were penanced with relative severity in the Penitentials; *vide* Schmitz I and II, *s. v.* "*Streit*."

[4] As a part of the well known influence of the Church in general; *vide* Schmitz I and II, *s. v.* "*Mord*", "*Totschlag*", etc.

[5] E. g. by adultery, fornication, homicide, etc., *q. v.* A frequent penance for certain sins was the emancipation of one or more slaves or serfs, along or with other penance; *vide* Schmitz I, *277 et seqq.*, 404, 499, 507, 557, 694.

CONCLUSION

In conclusion, we hope that our work may prove a convenient guide to the editions, critical writings, sources, origin, textual relationships and various other problems connected with the Penitentials in early Great Britain and Ireland.[1] In particular, it is to be hoped that we have made contributions of some value in clarifying obscure questions regarding the Penitential of David and the early Welsh synods; [2] the so-called *Canones Wallici*; [3] the connections of the old-Irish treatise *De Arreis* [4] with the main stream of penance; the enforcement of penance by secular laws among the Welsh and Irish; [5] the influence of the *Canones Hibernenses*, particularly of the Latin *De Arreis*; [6] the authorship of the Penitential of Vinnian [7] and of the penitentials of pseudo-Bede [8] I and II; and as regards the sources for the Penitential of Theodore.[9]

[1] *Vide supra*, chaps. i and iv, *passim*. We have also attempted to provide a fairly complete guide to the textual materials on the Penitentials in general; though limits of space have necessitated eliminating much material which we had worked up on this, as well as other topics.

[2] *Supra*, chap. i, sect. 9.

[3] *Supra*, chap. i, sect. 9.

[4] *Supra*, chap. i, sect. 10 and chap. iii, sect. 4.

[5] *Supra*, chap. i, sect. 9.

[6] *Supra*, chap i, sect. 10 and chap. iv, sect. 1.

[7] *Supra*, chap i, Sect. 10.

[8] *Supra*, chap. iv, sects. 4-5.

[9] *Supra*, chap. iv, sect. 1; also chap. i, sect. 10, under "*Canones Hibernenses*", "*De Arreis*" and the "*libellus Scottorum*."

As regards the practical influence of penance and of the Penitentials, in their direct relationships to secular morals and the like, we have attempted to assemble,[1] in more convenient form, such information on the forms,[2] administration [3] and influence of penance as would throw light [4] upon its effect in the period chosen and elucidate the interpretation of the Penitentials. More original work has been done in demonstrating the existence and importance of public penance in pre-Norman England; [5] in correcting the erroneous impressions prevalent regarding the wholesale laxness of the commutation [6] system, as seen in the Penitentials; in proving that the commutation system in Western Europe arose among the Irish,[7] rather than among the Anglo-Saxons [8] and that its chief evil lay in discriminating in favor of the wealthy: [9] in correcting certain misuse of penitential materials by authorities [10] on the history of various institutions in the pre-Norman period; and in various matters [11] of detail. In chapter v, we have endeavored to present a fuller, more accurate history of secular laws requiring or enforcing

[1] *Supra*, especially chaps. ii, iii and vi. In some cases we have followed the standard authorities but in many instances we have used the Penitentials directly.

[2] *Vide* chap. ii, sect. 1; also chap. iii, sect. 2.

[3] *Supra* chap. ii, sect. 6, and chap. iii, *passim*.

[4] E. g. as showing the practical effect of penance or as explaining technical terms.

[5] *Vide* chap. iii, sects. 2-3, and 6-8, inclusive.

[6] *Vide* chap. ii, sect. 4 and chap. iii, sects. 4, 9.

[7] *Vide* chap. iii, sect. 4.

[8] As previously believed; *vide supra*, for references.

[9] *Vide* chaps. ii and iii, under commutations.

[10] See index, under the works of Fischer, Hanna, Thurston, Lingard, Cutts and others; also under *Essays in Anglo-Saxon Law*.

[11] *Vide supra, passim*.

penance [1] in the pre-Norman period than was previously available and to stress the very great need for a strong system of discipline to supplement the weak,[2] secular laws. While the final chapter has been devoted to showing, in detail, how the provisions of the Penitentials served as powerful means to help supply such a discipline by penalising feuds [3] and contempt [4] for secular laws; by severe punishments for various kinds of perjury,[5] and by heavy penances [6] for crimes which the secular laws punished too lightly.

From the previous chapters it will readily be seen that the penitential system and secular laws mutually assisted each other in punishing criminals and in working for the preservation of law and order. The secular laws, on their part, offered substantial aid to the introduction and enforcement of confession and penance by providing severe penalties for their neglect and by alleviating secular penalties for those who performed them. On the other hand, the Church severely penanced those who neglected or resisted the enforcement of secular penalties; it insisted upon respect for the procedure of the secular courts; and, in many ways it held up to detestation crime and the criminal. The chief *media* of the Church for this important work were penance and the Penitentials.

Finally, we can find nothing that better summarises the potent influence for good exercised by the Penitentials than the graphic words of H. C. Lea: [7]

[1] *Vide loc. cit.*, sect. 4.

[2] *Vide* chap. v, sects. 5-7, inclusive.

[3] *Vide* chap. vi, sect. 1.

[4] *Vide* chap. vi, sect. 2.

[5] *Vide* chap. vi, sect. 3.

[6] *Vide* chap. vi, sect. 4.

[7] *Vide* Lea, *Auricular Confession* II, 106-107. The footnotes have been added by the present writer.

"Crude and contradictory as were the Penitentials in many things, taken as a whole their influence cannot have been but salutary. They inculcated in the still barbarian populations lessons of charity and lovingkindness, of forgiveness of injuries and of helpfulness to the poor [1] and to the stranger as part of the discipline whereby the sinner could redeem his sins. Besides this, the very vagueness of the boundary between secular and spiritual matters enabled them to instill ideas of order and decency and cleanliness and hygiene [2] among the rude inhabitants of northern Europe. They were not confined to the repression of violence and sexual immorality and the grosser offences, but treated as subjects for penance excesses in eating and drinking, the consumption of animals dying a natural death or of liquids contaminated by animals fallen into them; the promiscuous bathing of women and children was prohibited, and in many ways the physical nature of man was sought to be subordinated to the moral and spiritual. It was no small matter that the uncultured barbarians should be taught that evil thoughts and desires were punishable, as well as evil acts. Such were their tendencies, and though, at the present day, it is impossible to trace directly what civilising influence they may have exercised on the peoples subjected to them . . . . they exercised (such) influence."

[1] By giving alms, etc.; *vide* chaps. ii, iii, under commutations.

[2] Many such provisions were due to "taboo."

APPENDIX

I. Abbreviations and Dates for Sources

Following is a tabulated list of the abbreviations used and of the dates or origin of the chief sources. Further details will be found *supra,* in chaps. i, iv and v, on the literary history of the Penitentials and on the secular laws, respectively.

A. for the penitentials

1. *Of those that were used in pre-Norman England.*

P. Bede—Penitential of Bede—eighth century—English origin.

Ps. Bede or *Ps. Bede II*—the later, Frankish Penitential II of the ninth century, as distinct from pseudo-Bede I, edited by Albers. Penitential II is published by Wasserschleben, Schmitz, *et al.*

Can. Edg.—Canons of Edgar or *Canones Eadgari*—a pseudonymous work by an English canonist of the tenth century.

Can. Greg.—*Canones Gregorii*—a Frankish pseudo-Theodore of late origin—a variant compilation akin to the *Capitula Theodori, infra.*

Cap. Dach.—the *Capitula Theodori* or *Capitula Dacheriana* edited by D'Achèry—of late Frankish origin, (10th. century?).

Conf. Ps. Egb.—the Confessional of Egbert or *Confessionale Egberti*—a pseudonymous translation into Anglo-Saxon of a Latin penitential of Frankish origin—probably later than the eighth century, though the older portion may be by Egbert of York, (A. D. 732-766).

P. Egb.—the Penitential of Egbert of York.

P. Ps. Egb.—Penitential of pseudo-Egbert, of which Books i-iii, inclusive, are probably an Anglo-Saxon translation of the ninth century, Frankish code of Halitgar; while Book iv may be by Egbert.

P. Mart.—*Poenitentiale Martenianum*—the edition of the *Capitula Theodori of* Martène, increased to one hundred sixty-eight chapters and including, among the last chapters, material by the Iro-Scottish Adamnan, as well.

P. Th.—the genuine Penitential of Theodore, probably edited by a Northumberian scholar in the late eighth century.

Ps. Th.—the Penitential of pseudo-Theodore, distinct from others of the Theodore-cycle above; probably Frankish and of the ninth century; published as Theodore's by earlier editors.

2. OF CELTIC ORIGIN

P. Columb.—the Penitential of Columban, of the late sixth century—Continental.

P. Cumm.—the earlier, genuine Penitential of Cummean—seventh century, Continental.

Ps. Cumm. or *Exc. Cumm.*—the spurious *Excarpsus Cummeani* of the ninth century—Continental.

P. Dav.—the Welsh Penitential of David—excerpts from a larger work written by him in the last half of the sixth century.

P. Gild.—By Gildas, written in Brittany, *ca.* A. D. 570.

P. Vinn.—by an unidentified Vinnian, in Ireland, in the first half of the sixth century.

Syn. Br. or *Syn. Brev.*—The Welsh Synod of Brevi.

Sin. Hibern.—*Sinodus Hibernensis*—probably before the seventh or eighth centuries in Ireland; *vide* chap. iii, under *Canones Hibernenses.*

Syn. Vict.—*Sinodus Luci Victoriae,* a Welsh synod under David, in the same year as that of Brevi.

3. OTHER CONTINENTAL PENITENTIALS CITED

P. Eccl. Germ.—*Poenitentiale Ecclesiarum Germaniae,* a late one used in Germany and by Burchard of Worms (?).

P. Halitg.—that by Halitgar of Cambrai, (d. 831).

P. Mersebg.—*Poenitentiale Merseburgense,* published by Wasserschleben and by Schmitz; of late date.

P. Rom. or *Ps. Rom.*—the spurious Roman Penitential of the seventh century or the beginning of the eighth; Frankish.

NOTES: As regards the *Capitula Theodori* or *Capitula Dacheriana* of D'Achèry, (*Spicilegium* IX), Wasserschleben reprints them as one-hundred twenty *Capitula Dacheriana;* Labbe and Cossart, *Concilia,* (Paris, 1875), VI, originally published in 1677, reprints; as also the late edition of D'Achèry edited by F. J. De la Barre, (Paris, 1772), with the notes of Baluze and of Martène.

The *Poenitentiale Martenianum* of Martène has one-hundred sixty-eight chapters based on the *Capitula Theodori, supra,* the last twenty being Adamnan's. *Vide supra,* chap. iv, under the individual codes.

Other *Capitula Theodori* of Petit and Favier are Frankish, of late origin—a collection of fourteen chapters edited as Theodore's by Petit, (Paris, 1677), plus sixty chapters communicated to Petit by Nicholas Favier. The work of fourteen chapters is *P. Th., Lib.* ii; to which Petit adds those of D'Achèry, *ut supra.* It is claimed by several scholars that much of it is borrowed from the pseudo-Theodore. *Vide* H. and S. III, 175; Schmitz I, 512-513; Hörmann, in Fitting's

Mèlanges II, *passim*; Wasserschleben 16; Fournier, in *Nouvelle révue de l'histoire,* etc., XXIII, 46; Seckel, in *Neues Archiv* 296-297, 328-329, 326. Some of it is translated into Anglo-Saxon in Thorpe, *Ancient Laws,* etc. 307.

The long preface to the Penitential of Theodore is written in particularly barbarous Latin, but is valuable for hints at the sources from which the Penitential was composed. The title of the Penitential varies in different MSS., but all agree in ascribing its authorship to Theodore. *Vide* Schmitz I, 512; and H. and S. III, 175 and *passim.* Of the two books composing the Penitential of Theodore, the first is a penitential in the strict sense, while the second treats other matters of canon law. Book II is often found separately but most authorities reject Schmitz' view that it is of separate authorship; *cf.* Schmitz II, *passim.*

Penance and confession are frequently mentioned in other sources for the Irish, Welsh and English churches in the pre-Norman period. References are found in the lives of the saints; in the ecclesiastical histories, especially that of Bede; in the decisions of councils; in the sermons, correspondence and other writings of ecclesiastics; in the penitential codes; in the pontificals or service-books of archbishops; and in the secular laws. Modern scholars have used much of this material but have neglected much valuable evidence from the secular laws and from the pontificals; while modern writers have also passed by much valuable material in the Welsh *Vitae* and have often used as genuine penitentials that were spurious. *Vide supra,* under the individual sources listed above and *infra,* for more definite criticisms, under secondary works.

2. FOR THE ANGLO-SAXON LAWS; (after Liebermann, *Gesetze*)

Alf.—*Laws of Alfred,* (*ca.* A. D. 871 or 890-899).

I Ath.—*Laws of Athelstan—Tithes,* (*ca.* 925-936).

II Ath.—*Laws of Athelstan—At Greatley,* (*ca.* 925-935).

III Ath.—*Laws of Athelstan—Kent's Letter,* (928-938).

IV Ath.—*Laws of Athelstan—At Thundersfield,* (929-939).

V Ath.—*Laws of Athelstan—At Exeter,* (927-937).

VI Ath.—*Laws of Athelstan—Judicia Civitatis Lunduniae,* (930-940).

I Cn. or *Cn. Eccl.*—*Cnut, Ecclesiastical,* (*ca.* Dec. 25, 1027-1034).

II Cn. or *Cn. Sec.*—*Cnut, Secular.*

Cn. 1020—Ordinance of that date.

Cn. 1027—Ordinance of that date.

I Edw.—*Laws of Edward or Eadward the Elder,* (901-924).

II Edw.—The same, *At Exeter,* (924-925).

EGu.—*Treaty of Edward with Guthrum,* (*ca.* Nov. 921-938).

I Edg.—Edgar's *Hundredgemot,* (946-961).

II Edg.—*Edgar, At Andover,* (959-962).
III Edg.—*Edgar, At Andover, Secular,* (same dates).
IV Edg.—*Edgar, At Wihtbordestane,* (962-963).
Legg. Hen. I—pseudonymous *Leges Henrici Primi*—the work of an Anglo-Saxon canonist of the tenth(?) century.
I Ethr.—*Ethelred, At Woodstock,* (980-1013).
II Ethr.—*His Treaty With Olaf the Dane,* (*ca.* 991).
III Ethr.—*At Wantage,* (981-1012, 997?).
IV Ethr.—*At London,* (991-1002).
VI Ethr.—*Eanham,* (1008-1011 ?).
VII Ethr.—*At Bath,* (992-1011).
VIII Ethr.—Law passed after February, 1014.

II. Bibliography

For convenient reference, the present writer has arranged in two categories the books used by him or valuable for their materials on the chief subjects treated in this book. *A. Ecclesiastical Materials* will include the chief works used for chapters i-iv, inclusive, and for chapter vi. While *B. Secular Materials* will comprise those used or of special value for chapter v, in particular. The lists are not intended to be complete, an impossible task in such a broad field for a work of this narrow scope; but merely to include the works used and others of outstanding importance.

A. Ecclesiastical Materials

1. Sources. *Cf. supra,* "Appendix," I, for notes on the use of penitential evidence; also, *infra,* under secondary writers. Special editions of individual penitentials are described more fully *supra,* chaps. i, iv.

a. Other than Special Editions of the Penitentials

*1. D'Achèry, L., *Veterum aliquot Scriptorum qui in Galliae Bibliothecis delituerant, maxime Benedictorum Spicilegium.* (3 t., Paris, 1672 and 1723; earlier ed., 13 t., 1655-1677).
2. Basnage, *vide* Canisius, *infra.*
3. Canisius, H., *Antiquae lectiones.* (2 t. in 1, Ingolstadt, 1604; 2 t., Amsterdam, 1725), especially II.
**4. Haddan, A. W., and Stubbs, W., *Councils and Ecclesiastical Documents relating to Great Britain and Ireland.* (3 vols., Oxford, 1869-1878).
5. Harduin, J., *Conciliorum collectio.* (12 vols., Paris, 1715).
6. Bede, the Venerable, *HE=Historia ecclesiastica,* (ed. Chas. Plummer, Oxford, 1896).
7. Mai, A., *Scriptorum veterum nova collectio.* (10 t., Rom., 1841).

8. Mai, A., *Spicilegium romanum,* (Rom., 1841).
9. Mansi, J. B., *Sacrorum concilorum collectio.* (31 t., Florence, etc., 1759-1798); re-issued and supplemented by H. Welter, (Paris, etc., 1901 *et seqq.*); "*Introductio,*" (1903).
10. Maassen, F., *Concilia,* in *MGH.,* I, (Hannover, 1839).
11. Martène, E., and Durand, V., *Ampl. Coll.=Veterum scriptorum et monumentorum amplissima collectio.* (9 t., Paris, 1724-1733).
12. The same, *Thesaurus novus anecdotorum.* (5 t., Paris, 1717).
13. *MGH.=Monumenta Germaniae historica,* ed. Pertz, G. H., *et al.* (t. i-xv, pt. i, Hannover, 1826-1913). *Auctores antiquissimi,* (t. i-xv, pt. i, Berlin, 1877-1913).—*Epistolae,* (t. i-viii, Berlin, 1877-1912).
14. Migne, J. P. *MPL. Patrologia latina.* (221 t. in 222, Paris, 1844-1864).
15. Spelman, H., *Concilia . . . . in re orbis Britannici.* (2 t., London, 1639-1664). *Cf.* Wilkins, Thorpe, *infra.*
*17. Wilkins, D., *Concilia Magnae Britanniae et Hiberniae,* A. D. 446-1718. (4 t., London, 1737).
**18. Williams, Hugh., *Gildas*=his edition of *Gildae Opera.* (*Cymmodorion Soc., Record Series,* no. 3, in iii pts., London 1899-1901).

b. Editions of the Penitentials

**1. Schmitz, H. J., *Die Bussbücher u. die Buszdisciplin der Kirche,* (2 *Bde.,* Mainz, 1883) and his *Bussbücher u. d. Bussverahren,* (1898).
**2. Wasserschleben, F. W. H., *Die Bussordnungen der abendländischen Kirche,* (Halle, 1851).
**3. For special editions of individual penitentials and for other older editions, critical writings, etc., *vide supra,* chaps. i, iv.
**4. Friedberg, E., *Aus den deutschen Bussbüchern,* (1868). An excellent secondary discussion containing, also, good illustrative extracts.
**5. *Cf.* Haddan and Stubbs, *supra,* no. 4, of a.

2. Secondary.

a. Bibliographical Guides

**1. Gross, C., *Sources and Literature of English History,* (London, 1900; revised ed., 1915).
2. Hardy, T. D., *Descriptive Catalogue of Materials Relating to the History of Great Britain and Ireland,* (*Rolls ser.,* London, 1862-1871; 3 vols. in 4 pts.).
3. Manitius, M., *Geschichte der lateinischen Literatur des Mittelalters, Abt.* 1. (vol. ix, pt. ii of Iwan v. Müller, *Handbuch der klassischen Altertumswissenschaft,* Munchen, 1911). Devotes scant attention to the Penitentials.

*4. Chevalier, U., *Répertoire des sources historiques du moyen âge. —Bio-bibliographique.* (Paris, 1877-1886). 2 t.; revised ed., 1903, 1905-1907, 2 pts).—*Topo-bibliographique*, (2 t., in 6 pts., Monthélliard, 1894-1903). Has a useful, full list of the older material on the Penitentials and penance, sometimes supplementing the material in Gross. But Chevalier's guide must be used with care, as many texts are wrongly ascribed, especially penitentials.

5. Potthast, A., *Bibliotheca historica medii aevii: Wegweiser durch die Geschichtswerke des europäischen Mittelalters, bis 1500.* (1 *Bd.* and supplement, Berlin, 1862-1868; 2d. ed., *2 Bde.*, (1896).

**6. *Jahresberrichte der Gerschichtswissenschaft im Auftrage der historischen Gesellschaft zu Berlin.* (Berlin, 1878-, 1880-). Very valuable for recent material. But it needs supplementing, on the Penitentials and penance, by the *opp. citt., infra,* and from the indices to the periodicals on theology, etc., *infra.*

7. *Theologischer Jahresbericht,* ed. H. Holtzmann u. G. G. Krüger, (Freiburg, 1 B. u. Brunswick, 1882-) On the field of the Penitentials and penance, the references are very scanty and inadequate.

*8. *Bibliographie der deutschen Rezensionen.* (Leipzig, 1901-). Has excellent notices that supplement no. 7. Supplements the earlier *Bibliographie der Zeitschriften.*

9. *Répertoire bibliographique des révues francaises.* ed. D. Jordell, (Paris, 1897-1901).

*10. Richardson. *Periodical Articles on Religion.* Somewhat too general for our thesis, though it has useful notices on recent works on the Penitentials as related to paganism, food prohibitions, etc.

b. General Aids: Encyclopedias, dictionaries, manuals, etc.

1. Bumpus, Jno. *Dictionary of Ecclesiastical Terms.* (London, 1910).

**2. *Catholic Encyclopedia=Cath. Ency.* (15 vols., New York, 1907 *et seqq.*).

**3. *DCA=Dictionary of Christian Antiquities,* etc., ed. W. Smith and S. Cheetham. (2 vols., London, 1875-1880). Has an excellent general survey of the penitential field for its time and even now more reliable than anything else in English, except the few critical editions.

*4. *Dictionary of Christian Biography,* etc., ed. W. Smith and H. Wace. (4 vols., London, 1877-1887). Later abridged in revision by

5. Wace, H., and Piercy, W. C. (1 vol., London, 1911).

6. *DNB=Dictionary of National Biography,* ed. Leslie Stephen and Sidney Lee. (6 vols., London, 1885-).—*Supplement,* (3 vols., 1901).—*Errata,* (1904).—New ed., 22 vols., (1908-1909).—*Second Supplement,* (3 vols., 1912).

**7. *Dictionaire d'archéologie chrétienne et de liturgie.* ed. F. Cabrol et H. Leclercq. (Paris, 1905-).

**8. *Dictionnaire de théologie catholique.* ed. A. Vacant et E. Mangenot. (6 t., Paris, 1909-).

9. *Encyclopedia Brittanica,* 11th. ed., (London, 1910-1911).

**10. Herzog, J., and Hauck, J. G., *Realencyklopädie für protestantische Theologie, u. s. w.* (Leipzig, 1896-1913). Much fuller, especially on penance and the Penitentials, than the abridged English translation.

11. *The New Schaff-Herzog Encyclopedia of Religious Knowledge.* Revised by S. M. Jackson. (New York and London, 1908 *et seqq.,* 12 vols.).

**12. *KLex=Kirchenlexikon oder Encyclopädie der katholischen Theologie, u. s. w.* (10 *Bde.,* Freiburg, 1880-1895). Far better than no. 2, *supra.* ed. Hergenröther-Kaulen.

**13. Du Cange, C. D., *Glossarium mediae et infimae Latinitatis.* ed. G. A. L. Henschel, (7 vols., Paris, 1840-1850). Also d'Arnis, W. H. M., (7 vols., Paris, 1858), with some additions, as *Lexikon Manuale ad Scriptores Mediae et Infimae Latinitatis.* (Reprinted, 1866). Leopold Favre, ed. in 10 vols., (Niort, 1883-1887). Chas, Schmidt, *Petit supplément au dictionnaire de Du Cange.* (Strassburg, 1906).

On canon law in the period of the Penitentials treated, the following works have been found of particular value:

**14. The essay by W. Stubbs, in *Select Essays in Anglo-American Legal History* 1, 248-288, (Boston, 1907-1909).

**15. Makower, Felix, *Die Verfassung der Kirche von England.* (Berlin, 1894). Cited from the English translation, *The Constitutional History and Constitution of the Church of England,* (London etc., 1895).

**16. Sägmüller, J. B., *Lehrbuch des katholischen Kirchenrechts.* 3rd. ed., (2 vols., Freiburg, i. B., 1914),=*KR.* Very valuable for bibliographies on penitential matters.

**17. Scherer, J. B., *Lehrbuch des kanonischen Rechts.*

**18. Maassen, Fr., *Geschichte der Quellen u. der Literatur des kanonischen Rechts.* (Gratz, 1870). Still valuable for information on MSS. of the Penitentials, though it needs checking from recent critical works.

*19. Spittler, L. F., *Sämtliche Werke,* I-II, have suggestive material

20. The material on the Penitentials is very poor in the well-known manuals of P. Hinschius, (1869-1897); H. Gerlach, (1890); G. Phillips, (1855-1857, 1893); and E. L. Richter, (1886).

The following works on church history:

*21. Alzog, J., *Handbuch der universal Kirchengeschichte.* 8th. ed., (Mainz, 1866, 2 vols.; Eng. transl. by F. J. Pabisch and T. S. Byrne, in 3 vols., Cincinnati, 1903).

*22. Funk, F. X., *Kirchengeschichte=KG.*, Eng. transl from 5th,. ed by L. Cappadelta, in 2 vols., (London and St. Louis, 1910).

*23. Gieseler, J. C. L., *Lehrbuch, u. s. w.* Eng. transl. from the 4th. German ed. by S. Davidson, with notes. (New York, 1857).

*24. Robertson, J. C., *History of the Christian Church,* has unusually good summaries of the social influence of the Penitentials. 4th. ed. (4 vols. in 5, London, 1867).

**25. Schaff, P., *History of the Christian Church.* 3rd. ed., (7 vols., New York, 1889), with extracts from the Penitential of Theodore, in translation.

**26. Ayer, J. C., *Sourcebook of Ancient Church History.* (New York, 1913), pp. 624-630, contains extracts from the Penitentials of Vinnian, Theodore and Bede.

NOTE:—Other standard works on church history—e.g. those by Hauck, Herzog, Moeller, Newman, Kraus, Fisher—do not possess much value on the Penitentials or omit discussion of them entirely. In general, the manuals on church history either neglect the topic almost entirely or, even with the preferred works starred above, use the texts uncritically and draw too general conclusions from insufficient data. *Vide supra,* chaps. ii, iii on commutations, in particular.

*27. Bright, W., *Lectures on the Early English Church.* (Oxford, 1878; 3rd. ed., 1897).

*28. Hunt, W., *The English Church, A. D. 597-1066.* (London, 1899).

29. Lingard, J., *History and Antiquities of the Anglo-Saxon Church.* (2 vols., 1845; reprinted, 1858). Valueless in the penitential field but still quoted by some Catholic authorities.

**30. Cutts, E. L., *Parish Priests and Their People in the Middle Ages.* (London, 1881). Valuable on penance from the Protestant viewpoint, but omits references and neglects the Penitentials.

**31. Bridgett, T. E., *History of the Holy Eucharist in Great Britain.* Very valuable for the Catholic viewpoint, though a little antiquated on points of authorship. Uses Penitentials insufficiently. (2 vols., London, 1881; later ed., 1 vol., 1908).

**32. Lea, H. C., *History of Auricular Confession and Indulgences.* Still valuable for the Protestant interpretation, though it decidedly needs checking with more recent works as regards penance, the authorship of individual penitentials, materials from the secular laws and other points.

**33. Hefele, C. J. von, *Conciliengeschichte.* (7 vols., Freiburg i. B., 1855-1874) 2d. ed., 6 vols., 1873-1890; continued by J. Hergenröther, vols. viii-ix, 1887-1890; Eng. transl. by R. W. Clark, *History of the Christian Councils,* vols. i-v, Edinburgh, 1871-1896). But particularly H. Leclercq, *Histoire des conciles,* (vols. i-v, in 9 vols., with corrections, notes and supplementary material. (Paris, 1907-).

Among others, the following on the history of penance:

**34. Batiffol, P., *Études d'histoire . . . . et de théologie positive,* (Paris, 1902).

**35. Binterim, A. J., *Denkwürdigkeiten der katholische Kirche,* (Mainz, 1825-1847), as cited.

36. Brat, *Les livres pénitentiaux et la pénitence tariffée,* (Brignals, 1910).

**37. Funk, F. X., *Kirchengeschtliche Abhandlungen u. Untersuchungen,* (Paderborn, 1897), especially vol. i.

**38. Kliefoth, *Liturgische Abhandlungen,* 2 vols., (1881).

*39. Lepicier, A., *History of Indulgences.* (Eng. transl., London, 1906).

*40. Morinus or Morin, J., *Commentarius hist. de disciplina poenitentiae,* (Paris, 1651).

**41. Rauschen, G., *Eucharistie u. Busszsakrament in den ersten sechs Jahrhunderten der Kirche.* (Freiburg i. B., 1903; Eng. transl., 1908).

**42. Kirsch, P. A., *Zur Geschichte der katholischen Beichte.* (1902).

**43. *Cf.* Loofs, in *Leitpfaden der Dogmengeschichte, passim.* (*4te. Aufl.*, 1906).

*44. O'Donnell, M. J., *Penance in the Early Church.* (Dublin, 1908- an enlarged D. D, thesis).

**45. Watkins, O. D., History of Penance, (2 vols., London, 1920). A very valuable collection of texts on penance, with good sketches of the history of that institution. Strongly biased in favor of a Celtic origin for private penance. Omits some important evidence on public penance, like the Pontifical of Egbert and passages from the Dialogue of Egbert, besides evidence from the Penitentials. Has extracts from the codes of Theodore, Gildas, David, Vinnian, Columban, bearing on private penance. Uncritical as regards the authorship of Vinnian's code, which Watkins assigns to Finnian of Clonard without definite evidence.

**46. Seiffert, F., *Die neueste . . . . Forschungen über Busse u. Glaube.* (Berlin, 1896).

*47. Sirmond, J., *Hist. poenitentiae publicae.* (Paris, 1683).

48. Frank, *Die Buszdisciplin der Kirche,* (Mainz, 1867). Very traditional in viewpoint and now considerably antiquated but much used by Schmitz, in the latter's edition of the Penitentials.

NOTE: For penance and confession in the early English Church, there are suggestive articles by Hanna, in *Cath. Ency.* XI, 632-633 and by Thurston, in *The Tablet,* (London, Feb. and Mar., 1905). The present writer agrees with many of their conclusions but wishes to note the following defects: (1) The careless use, as genuine, of spurious texts from the unreliable edition of the councils by Wilkins, particularly for the Penitential of pseudo-Egbert and for the pseudonymous Canons of Edgar; (3) the uncritical acceptance and use as genuine of the spurious *Excerptiones Egberti* and of spurious texts of the Penitential of Columban; (3) the insufficient use and treatment of materials from the Penitentials; (4) similar neglect of recent secondary materials on public penance and on penance in the Celtic Church; (5) uncritical use of materials from the Anglo-Saxon Laws from antiquated editions; (6) important omissions from the secular laws of the Anglo-Saxons, Welsh and Irish; (7) omission of important matter from the pontificals. Evidence from the pontificals has been very generally neglected by many modern writers. *Vide supra,* chap. iii.

A more complete list of the sources for early English penance than that given in the article by Hanna, cited *supra,* would include abundant references in the lives of the saints; the decisions of councils; the ecclesiastical histories; the sermons, correspondence and homilies of ecclesiastics; the penitential codes; the pontificals; and the secular laws. In particular, one should add to Hanna's list the various sets of Anglo-Saxon homilies; the correspondence of St. Boniface; the various works of Aelfric; the pontificials of Egbert, Magdalen College, Canterbury, and others; the acts of early British councils from the better editions by Haddan and Stubbs and among the ecclesiastical laws in Liebermann's *Gesetze:* the Anglo-Saxon Laws from Liebermann's edition; and frequent regulations in the Penitentials.

Tht account of penance in England in Hasting's *Encyclopedia of Religion and Ethics* supplements that in the article by Hanna in some respects but is open to much the same criticisms. In particular, it erroneously regards as spurious the *Dialogus Egberti,* which most scholars now consider Egbert's; and considers genuine the pseudonymous *Excerptiones Egberti.* See these works, *supra,* chap. iii.

As regards the existence and extent of public penance from the fifth to the eleventh centuries, recent writers have challenged the traditional views that public penance was native in the West from the beginning. An excellent survey of the new and old views is to be found in articles by Koch, in *Historisches Jahrbuch, (Görres-Gesellschaft,* 1897, 1900), and in *Th. O.,* (1903, 1904), especially the first article, pp. 481-482.

For the traditional view: Sirmond, *Historia poenitentiae publicae,* (Paris, 1683), especially *capp.* 5, 10; Frank, *Buszdisciplin,* 196 *et seqq.,* 650 *et seqq.,* and *passim;* Schmitz I, 34-35; Ludwig, in *AKKR.,* (1903), LXXXIII, *N. F.,* VII, pp. 219 *et seqq.,* (particularly good).

The newer views, opposed to the preceding, believe that the penitential stations were introduced spasmodically from the East; that public penance was never continuous in the Western Church; and that it soon declined there. *Vide supra,* for the excellent articles by Koch; Funk, in his *Kirchengeschichtliche Abhandlungen* I, (1899), 196 and 384; also in *KLex.* II, *s. v. "Busse;"* Funk, in *Th. Q.,* (1886), 363 *et seqq.*; a modified acceptance of the thesis of Funk and Koch by Hergenröther, *KG.,* (1902), I, 315, 418; the older view of Binterim, *op. cit.* V, ii, 371 *et seqq.,* 368 *et seqq.* For others, *pro* and *con, vide Jahresberichte passim,* particularly IV, (1902), 221.

The interpretation of the terms in the sources on public penance often is very ambiguous. Sometimes such terms involve phrases used in the Penitentials—*e. g.* the meaning of such terms as *"exterminabitur ab ecclesia," "projiciatur ab ecclesia,"* etc., as used *supra,* chap. iii. The articles of Koch, Ludwig, and others, *supra,* possess value by aiding in the elucidation of such phrases in the Penitentials and other sources.

As regards the meaning of phrases like those above, some valuable work has been done to ascertain the meaning of the term *"ecclesia".* Though the question is still undecided, phrases in this usage may mean that penitents were sometimes excluded from the church-building for a time; or that they may have been dismissed for a part of the service; or merely that they were cut off from the congregation's church rights; or that they remained in a kind of vestibule. *Vide* Rauschen, *op. cit.* 138, 140; Batiffol, *Études* 145-195; Hergenröther, *KG.,* II, 313-314; a masterly article by d'Alès, in *RHE.,* (1906), 16 *et seqq.;* Schmitz I, 28, 68, 71, 65, 91-92, 536, 641; and the articles in the preceding paragraphs; also *supra,* chap. iii, for further discussion of public penance for England.

B. ON THE SECULAR LAWS

1. *Sources*

**1. Liebermann, F., ed., *Gesetze der Angelsachsen.* (3 vols., (Halle, 1898-).

**2. F. L. Attenborough, ed. and transl., *Laws of the Earliest English Kings.* (Cambridge University Press, 1922). The first English edition since Thorpe's and including the results of Liebermann's work.

**3. Maitland, F., *Select Pleas.* Vol. i, (London, 1889).

4. Schmid, R., *Gesetze der Angelsachsen.* 2d. ed., enlarged. (Leipzig, 1858).

*5. Thorpe, B., *Ancient Laws and Institutes of England.* (*Record Commission*, London, 1840, used in 1 vol., fol. ed.). Still useful for portions absent in other editions, particularly for his "*Monumenta Ecclesiastica.*" Later editions are preferred for the texts included by him, when they are available, as his texts are sometimes poor. He includes, as genuine, various pseudonymous works —e. g. *Canones Eadgari*, the pseudo-Theodore, the *Confessionale Egberti, Leges Henrici Primi*, and others. His texts for the works of Aelfric are good, as are also those of the Canons of Edgar and the *Confessionale Egberti*, when allowance is made for incorrectness in ascriptions, etc.

2. *Secondary.*

**1. Brunner, H., *DRG.=Deutsche Rechtsgeschichte.* (2 vols., Leipzig, 1887-1892; 2d. ed. of vol. i, used, 1906).

2. *Ibid., ERQ.=Geschichte der englischen Rechtsquellen in Grundriss.* (Leipzig, 1909). *Cf. Select Essays, infra.*

**3. Chadwick, H. M., *Studies in Anglo-Saxon Institutions,* (Cambridge, 1905).

**4. *Essays in Anglo-Saxon Law.* ed. H. Adams. (Boston, 1876). Still useful, though it needs checking in places with later editions of the sources, more recent critical writings, etc. Material from the Penitentials is used from older, poor texts and very uncritically e. g. Frankish works are quoted to illustrate English practice, etc. The best essays are those of Adams, on "Courts of Law;" by E. Young, on "Family Law;" and by Laughlin, on "Legal Procedure."

**5. Hodgkin, T., *History of England . . . . to the Norman Conquest.* Vol. i of Hunt, W., and Poole, R., *Political History of England.* (London, 1905).

**6. Holdsworth, W. S., *History of English Law.* (3 vols., London, 1903-1909, now in process of revision in a new work, of which three volumes will be revisions, while three more will be new).

*7. Jenks, E. T., *Law and Politics in the Middle Ages.* (London, 1898; 2d. ed. used, 1913).

**8. Lea, H. C., *Superstition and Force.* (Phila., 1866; later ed. used, 1892).

**9. Pollock, F., and Maitland, F. W., *History of English Law.* (2 vols., Cambridge, 1898).

**10. Maitland, *DB.=Domesday Book,* etc., (3 vols., Cambridge, 1907, especially vols. i, ii).

**11. Pollock, F., essay "The King's Peace," in his *Oxford Lectures,* chap. iii. (London, 1890. *Cf.*, also, in *Select Essays, infra.*

12. Pike, L. O., *History of Crime in England.* (2 vols., London, 1873-1876). Still possesses some slight value for the Anglo-Saxon Laws.

**13. Seebohm, F., *Tribal Custom in Anglo-Saxon Law.* (London, etc., 1902). Has valuable material showing the relations of religion and the secular laws, besides discussion of some of the penitential canons used among the Irish.

**14. *Select Essays=Select Essays on Anglo-American Legal History.* ed. by a committee of the Association of American Law Schools. (3 vols., Boston, 1907-1909). Very valuable. Especially nos. 36, by Brunner; 48, by Maitland; 674, by Pollock; and 769, by Stubbs, on the sources, the king's peace and canon law, respectively.

**15. Stubbs, W., *Constitutional History of England.* 3rd. ed., especially vol. i.

**16. Vinogradoff, P., *English Society in the Eleventh Century.* (Oxford, 1908).

*17. Maurer, K., "*Angelsächsische Rechtsverhältnisse,*" in *Kritische Uberschau der deutschen Gesetzgebung.* (München, 1853 *et seqq.*). Still excellent for some phases.

18. Grimm, J., *DRA=Deutsche Rechstaltertümer* (*2 Bde.* Leipzig, 1854, 1899).

19. Wilda, W. E., *Strafrecht der Germanen.* (Halle, 1842). Especially chapter v.

C. PERIODICALS

Particularly the following:

1. *AKKR., Archiv für katholisches Kirchenrecht.* (Mainz, 1872 *et seqq.*).
2. *Cymmrod. Soc., Publications of the Cymmrodorion Society.* (London, etc., 1877-).—*Transactions,* (1892-1893, 1894-).
3. *Historisches Jahrbuch.* (*Görres-Gesellschaft*), (1876-).
4. *RHE, Révue de l'histoire ècclésiastique.* (Louvain, 1900-).
5. *RHLR., Révue de l'histoire et de la littérature réligieuse.* (Paris, 1896-).
6. *RHR., Révue de l'histoire de réligions.* (Paris, 1880-)
7. *Th. Q., Theologische Quartalschrift.* (Tübingen, 1819-).
8. *ZKT., Zeitschrift für katholische Theologie.* (Innsbruck, 1877-).
9. *ZKG., Zeitschrift für Kirchengeschichte.* (Gotha, 1877-).

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